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CAVALCADE OF JUSTICE

By Bernard O'Donnell

THE OLD BAILEY AND ITS TRIALS

CAVALCADE OF JUSTICE

CAVALCADE

of

JUSTICE

BY

Bernard O'Donnell

THE MACMILLAN COMPANY

NEW YORK: 1952

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PRINTED IN THE UNITED STATES OF AMERICA

First Printing

To

JILL AND JANET

Two charming young ladies who honoured me by becoming my grand-daughters, and but for whom this book would have been completed much sooner.

INTRODUCTION

BRITISH justice has not always warranted the pride that we feel today in our system of law and order. For centuries our conception of justice was primitive to the point of barbarism, while our laws were administered with savage ferocity by judges who, in some instances, were monsters of inhumanity.

But that is all over now, and today our law is humane and just. No country has made so great a contribution to the body of law existing in the world today as England. Her law is not only the law of this country, but it is the basis of the law in all the great areas of our Commonwealth and in the United States. It is not the law of Scotland, although a great deal of modern statutory law is common to both countries. The basis of Scots law is largely native in character, although it bears traces of Roman law.

Interest in our courts of law abounds in the heart and mind of almost everybody. It is to tell people something of the origin and development of those courts that I have written this book.

In it I propose to tell in simple language the history of our courts of law throughout the ages right up to the present day. I shall show the part they have played in the cavalcade of justice from the earliest times, and point out how they came into being as necessity demanded, through the growing structure of society. I shall illustrate my story by relating some of the human and historic dramas which have been played out within their walls—when they had walls, for our earliest courts, as you will see, were held in the open air.

CONTENTS

Chapter		*Page*
1.	Our Earliest Courts of Law	9
2.	England's Oldest Law Court	20
3.	The Sheriff's Court	34
4.	The Assize Courts	51
5.	The Assize Courts (*Contd.*)	65
6.	The Old Bailey	82
7.	The Coroner's Court	94
8.	The King's Bench Court	108
9.	The Court of Chancery	123
10.	The House of Lords	137
11.	The House of Lords (*Contd.*)	150
12.	Quarter Sessions and Police Courts	162
13.	The Court of the Star Chamber	178
14.	The Court of Empire	187
15.	The County Court	202
16.	The Law Courts	211
17.	The Divorce Court	216
18.	Probate and Admiralty	230
19.	The Courts of Appeal	248
	Bibliography	257
	Index	258

CHAPTER ONE

OUR EARLIEST COURTS OF LAW

CUSTOM is the root of English law, and the pattern that we have to-day began through a common interest in suppressing any act likely to upset the social order, or any offence which might inflict some harm or injury upon any member or members of the community.

In Anglo-Saxon times, when the pattern was being created, there was, of course, no England as we know it to-day, and the early customs and laws did not apply to the whole country. There was in fact no single country with a single government. The kingdoms—Kent, Wessex and the Midlands—each with its own separate Monarch, were divided into communities. These were small and widely-scattered, so that the customary laws differed according to their area.

The inhabitants of each village looked for guidance to one of the elders or heads of the community. A man of integrity, he was the leader of the group, and therefore best fitted to decide the laws and customs under which the community should live.

Because these communities were scattered, and because travelling was difficult, life was much simpler and laws were fewer and less intricate. They revolved mostly round offences and wrongs such as man-slaying, violence and cattle-stealing. Even so, acts of violence were looked upon as civil wrongs rather than crimes, and they were wiped out by the payment of what we would to-day call *damages* but what in early Anglo-Saxon days were termed *bōts*, which meant to make *amends* or *make good.*

For the theft of property—consisting chiefly of land and cattle—the penalty was also a matter of damages, and it is worth while going back to the very earliest written statement of English law as set out in the *Dooms* (judgments) and *Bōts* (amends) of Ethelbert, King of Kent over thirteen hundred years ago, about A.D. 600.

They consisted of ninety brief laws, No. 4 of which runs:

"If a freeman steal from the king, let him pay nine-fold."

It was not so expensive to steal from a brother "freeman" for the *bōt* was only threefold.

A similar class distinction is seen in another edict of the king in relation to an offence against the person. *Doom* 10, reads: "If a man

lie with the King's maiden, let him pay a *bōt* of L (fifty) shillings."

It was much cheaper for a "freeman to lie with a freeman's wife", for then the offender had only to pay six shillings, but, in addition he had "to provide another wife with his own money, and bring her to the other."

The penalty for acts of violence varied.

"If the nose be pierced (broken) let *bōt* be made with IX shillings."

"If an eye be struck out, let *bōt* be made with L shillings."

Even in those early days, there was some attempt to make the punishment fit the crime, or at any rate to make a breach of the law an unprofitable business.

These customary laws were not written down; few people except the clergy could write. Such laws or customs were passed on from generation to generation and so became embodied in the rules governing the various communities throughout the land. In time they became accepted in the particular districts for which they were designed, and gradually the passing of judgment was left to someone of good repute who, sitting on the village green, with no more, perhaps, than a spreading tree to lend majesty to his deliberations, held his primitive court of justice.

These early assemblies were really meetings of the ordinary common men of the district, neighbours in different localities. They were destined to frame the basis of what we now call our Common Law, which, adapted through the centuries to the needs of each age, largely governs us at the present time. It is the law which says, in effect, that one man is as good as another, that all men have equal rights. Basically, these are the points which were set forth in Magna Carta signed by King John in 1215 declaring:

"To none will we sell, to none will we deny or delay, right or justice."

The early laws were few and simple, and the early Anglo-Saxon Courts were modest in being and restricted in action and power. All English courts, the Shire (or County) and Hundred originated from the *folk-moot*; this controlled local government, such as it was, and was also a local court. The original Anglo-Saxon courts of law were called County Courts (Shire-moots) and Hundred Courts (Hundred-moots). The County Courts—not to be confused with the present-day County Courts which came into being with the act of 1846—were held twice a year, while the Hundred Courts sat every four weeks.

The term Hundred probably meant at first a group of a hundred families, but was later used to indicate the area in which the families lived. But its real importance to us arises from its court of justice

where public offences and private wrongs were dealt with. These Courts of Hundred, as they were called, were part of the administration of justice until they were more or less extinguished by the County Courts Act of 1867. They were the judicial units for ordinary affairs—a sort of lower court in much the same way as the police courts are to-day.

County Courts may be described as the most ancient and most modern of English courts. They are said to have been instituted by Alfred the Great, having been founded on the Saxon *Curia Comitatus*, which was a local court dealing with small debts. They also dealt with ecclesiastical matters, and were thus the forerunners of our present Consistory Courts.

The County was not merely a stretch of land covering a certain area, but an organised body of men over which the court had jurisdiction in small causes. They were presided over by an earldorman, bishop or sheriff, so that it was a higher court than that of the Hundred. The freeholders of the county were the actual judges, the earldorman, bishop or sheriff being a sort of Chairman of the Bench whose function it was to pass and carry out judgment.

There were no rules of evidence as exist to-day, and cases were decided on the oath taken by either side. There were no witnesses as we know them—no persons called to testify to certain facts bearing on the offence or claim. Nor were there any juries to give their decision on the truth or otherwise of the facts produced before the court, or any judges to lay down any hard and fast principles of law.

Instead, the plaintiff would make his accusation against the person he was bringing to law, and take oath that what he said was true. But that was by no means enough. He had, in addition, to produce other men of acknowledged repute to swear that his case was genuine. "Oath-helpers" or "Oath-swearers" they were called. Another name for them was "Compurgators".

Alfred the Great was very insistent that such witnesses should be "oath-worthy" and ordered:

"I will that every man look well to his oath", which was of the following solemn character: "I swear by the Lord God this oath which———has sworn, is clean and without guile."

In Domesday Book there is an account of how William de Chernet "claims this land . . . and adduces witnesses from among the wisest and most substantial men of the whole county and hundred. And Picot brings against them testimony from the villeins (small land-owners) and obscure people and reeves who offer to make proof by oath or ordeal".

The Ordeal was the next step in establishing proof one way or another, and ordeals were as varied as they were cruel in the matter of proving the guilt or innocence of a party.

There was a great deal of superstition attached to the Ordeal. As a test of truth or falsehood it was looked upon as the direct "judgment of God". In the time of Ine, 688–726, King of the West Saxons, plunging a hand into boiling water was very popular. If the hand did not blister the bonafides of the person volunteering for the Ordeal were considered proven. In later years a lump of red hot iron weighing one pound had to be carried for three paces. A blister "half as large as a walnut" sufficed to prove the person guilty.

With the Normans, came the Ordeal by Battle in which the accuser and accused (or plaintiff and defendant) met in battle which might go on the whole day until twilight. The object was not so much to slay an opponent, as to force him to surrender, and compel him to cry "craven".

If a person was thus vanquished he was immediately hanged and mutilated.

Although Ordeals generally were prohibited by Henry III in 1219, less than 150 years ago, in 1818, a man was challenged in one of the English Courts to a "Wager by Battle". Lord Ellenborough, the learned judge who was trying the case of *Ashford v Thornton*, had to agree that the challenger was within his legal rights. But . . . no "battle" took place.

The punishments for wrong-doers were as brutal and inhuman as the methods of proof were crude and primitive.

The ancient Britons executed offenders by drowning them in a quagmire, and even in the Middle Ages certain barons and others had their own "drowning pit". Hanging was always a popular form of punishment, and in 1241 the additional refinement of drawing and quartering the victim became the vogue. It is little more than a century since this practice ceased in England, and since the heads of half-hanged men were hacked from their still quivering bodies and held aloft to public view.

Prior to hanging, the axe was used, beheading having been introduced by William the Conqueror. The first person to meet his death on the block in this country was the Earl of Huntingdon in 1076. The last was Lord Lovat in 1747.

As early as A.D. 304 law-breakers were burnt alive by the Anglo-Saxons, and this punishment continued until George III abolished it in 1790. Boiling to death, the rack, thumbscrew and boot, together with whipping at the cart's tail and nose-slitting were among other

pleasantries inflicted on those who broke the laws of the various times and periods.

English law and custom has, through the centuries, created a model legal system, but the process of humanising our laws and making the punishment fit the crime in less barbaric manner has been extremely slow; but it has been sure. We have made great strides since damaging trees and saplings to the value of £5, stealing oysters from an oyster bed, defacing marks on government property, poaching—to mention but a few offences—all led to Botany Bay and transportation for life.

Nevertheless, English law, except for what we call statutory law as coming from the legislature, is still based on those ancient spoken precedents to which I have referred. The same customary laws of to-day were laid down on the village green. Our courts have evolved from those humble judicial bodies which I have mentioned.

Although it no longer functions as a court of law, Westminster Hall, the original home of our Royal Courts of Justice, may be described as our oldest law court. For this reason, as well as for the colourful part it has played in the story of English Justice, it is fitting that it should be the first among the courts to be reviewed.

This picturesque, ancient and dignified building beneath the shadow of Big Ben on one side, and Westminster Abbey on the other, is something more than our oldest law court; it enshrines not only the history of our laws but much of the history of our national life as well.

Within its walls our earliest parliaments were sometimes held, our earliest laws were made, and those same laws were administered. Its spacious, stone-flagged floor echoed to the voices of contesting litigants, and rang with the eloquence of some of the world's greatest orators.

To-day, Westminster Hall is all that remains of the original Palace of Westminster, which was the royal palace under Canute. It sheltered our earliest kings and housed the long line of Plantagenets and Tudors. The old palace was burnt down 30 years before the Conquest. Tradition says that Henry VIII had the Royal nurseries over the Exchequer Court in the Hall, and that Edward IV was reared there. Elizabeth is also said to have had a great liking for the Hall, having used it as a breakfast-room and, at times, a concert room. Long ago there was a musicians' gallery at one end, but this has disappeared.

There have been many changes in structure since William Rufus had it built in 1099, and held his first Court there. But the form of

the present hall has existed since 1399 when Richard II was on the throne.

Not even the Cloth Halls of Ghent or Antwerp, or Rheims Cathedral can rival in antiquity this Norman heritage. When it was built, Constantinople was the capital of the East, Baghdad was still the City of the Caliphs, the Moors of Spain were the most civilised people in Europe.

In this great Hall, where, as recently as 1950, King George VI celebrated the opening of the new House of Commons, in place of that destroyed by German bombs, Prince Henry was crowned eight hundred years ago in 1170, the King, his father, waiting upon him at table. In 1236 "wherries" were rowed into the Hall which had been flooded by the high tide from the near-by Thames. In 1396 Richard II celebrated there his marriage to the child Queen, Isabella of France. Again in 1579 the Thames overflowed to such an extent that when the stream subsided, "fishes were left upon its floor."

Until the accession of William IV, in 1830, every crowned King of England held his Coronation banquet in Westminster Hall, and on those picturesque occasions the hereditary King's Champion would ride up the Hall on a charger clad in all the imposing armour and accoutrements of his proud office, to fling down the gauntlet in challenge against all comers in defence of the new King's title.

Concurrent with all the pageantry of royal functions down the centuries, this Hall was the scene of trials that have made history. No country in the world has a building of such antiquity in relation to its law, and it is only seventy years ago that Westminster Hall ceased to be the home of Britain's Royal Courts of Justice. The present Law Courts at Temple Bar were opened in 1882.

How was it then that this great Hall came to figure so prominently in the history of law and justice in our land? How came it that judges sat in the Hall at a time when provincial assizes were held in the open air?

We have seen something of those early primitive courts where rough and ready justice was administered according to the different laws in different places.

With the growth of the community and with the march of progress, and as the relationship between these small separate states, as it were, became more complicated, other laws became necessary and new courts came into being. There would be no need for any law of copyright until long after the printing press had been invented, and no law of contract would be required until commercial transactions became more involved. In those early days such deals were simple

ready-money transactions, and any trading disputes which arose would be settled between the parties concerned. The local courts could easily deal with such problems as came before them.

As communities grew in number and human affairs became more complex, a great change came over the scene. During the reign of Edward the Confessor, 1041–1066, we read of him travelling all over the kingdom in spring and winter to "oversee justice". Accompanied by the members of his Council, which was comprised of ecclesiastics and thegns (holders of a certain area of land who were personal followers of the King), he set out on what we may call his Assizes. Long before there were Parliaments, the King with his Council issued laws, and before the Conquest he was recognised as having jurisdiction over the whole of England.

He used sometimes to sit in person to hear such cases as were brought before him, and it was not until the reign of Henry V, 1413–1422, that monarchs ceased to attend their Assizes.

In the meantime, courts other than those of the Hundred and the County had begun. These were the privately-owned courts of the Lords of the Manor or of Ecclesiastical bodies. They had mostly come into being by way of Royal Grants in many cases—the Confessor was particularly generous to the Church in this respect—and they were presided over by the Lords who had been granted these rights, or by his bailiff or steward. They were not just isolated instances of private ownership of justice, but, as A. T. Carter, C.B.E., K.C., states in *A History of the English Courts* "These Courts were so numerous and various that, as Mr Adams puts it, 'the entire judicial system of England was torn in pieces,' justice was no longer a public trust, but a private property. These Franchise Courts were regarded as proprietary Hundred Courts. They administered the same law, observed the same procedure, and were subordinate to the Shire Court".

The owners were not only entitled to hold such Courts, but they were also entitled to any profits they might make by way of fines, or amercements as they were termed.

Later on we shall see how these courts worked, and how they were exploited beyond the powers originally granted.

After William the Conqueror had invaded, he was anxious to be on good terms with his English subjects. He decided that not only should they retain their old Saxon laws, with a few additions brought over from the Continent, but that they should also be allowed to continue their local Hundred and Shire (or County) courts and customs. The result was that he gradually gained the support of the

English, and made things a good deal easier for himself than they might have been.

William also permitted the Franchise (or Manorial) Courts to continue to exercise their powers of jurisdiction. Any Lord possessed of land to the extent of five acres, and having a certain number of tenants upon his estates, could hold a court for the purpose of deciding domestic disputes and actions affecting the land of the manor. Frequently they held a criminal jurisdiction which varied in power and extent according to the grant or charter held, or to the practice which had been carried on in the past.

This private ownership of justice was as readily accepted as is the private ownership of stocks and shares to-day. When William gave grants of land to his Barons, he allowed them to set up private courts in their domains. They were not slow to take full advantage of their rights. To say that these feudal Lords abused as well as used their powers, and executed justice or injustice according to the mood of the moment, is to put it mildly. This was one of the reasons why the King's Court became so popular throughout the land when it began to operate on a wide scale.

William Craddock Bolland, M.A., in his lectures on *The General Eyre* published in book form, says of these Courts Baron "As a result of William's system of tenures, England after the Norman Conquest was covered with the private jurisdictions of lords of various degrees from the King downwards . . . William divided the whole country into manors, tenures of one kind or another. . . . Many of these manorial courts exercised either legally by royal grant, or illegally by usurpation, powers far beyond those naturally inherent in a Court Baron. . . . Some of them adjudicated in actions of debt between tenants. Others used even more extended powers, the power of executing judgment of life and limb; trying felons for capital offences and giving them short shrift when they were found guilty."

When William Rufus came to the Throne, in 1087, he was careful not to disturb the power of the Lords and Barons over their courts, and so—they prospered and flourished. In fact Rufus did little towards the judicial life of England beyond the building of Westminster Hall.

It was during the reign of Henry I, 1100–1135, that there was another phase in the development of the English system of law and justice; King's Courts as we know them to-day began to take form. There had been King's Courts before Henry I. They were devised almost entirely for the protection of royal rights rather than for the

administration of justice. They were more concerned with the collection of the King's revenues than with any judicial functions. At first they existed side by side with the old local and feudal courts, but they were to be approached only in the last resort.

This usage had come down from Anglo-Saxon times, when in the reign of Edgar, 957–975, it had been ordained, "Let no one apply to the King in any suit unless he at home may not be worthy of law or cannot obtain law; if the law be too heavy let him seek a mitigation of it from the King." Later, in Canute's reign, 1014–1035, we find him pronouncing, "and let no one apply to the King unless he may not be entitled to any justice within his hundred". Thus the principle of the King's Court being open to all who sought justice and to all actions great or small did not apply in those days.

Only the rich and powerful could bring a case before the King, and this usually meant a journey up to Westminster. The poor man had to seek his justice at the hands of those who presided over his Hundred or County Court. It was Henry I who sent some of his judges from county to county to combine the office of revenue collecting with the hearing of pleas both civil and criminal. They heard local disputes; they made enquiries into the various local laws that obtained, and in this way not only took the place of the old head-men, sheriffs, bailiffs and stewards of the various local courts, but also gained valuable information about local laws and customs.

These justices were the predecessors of our present-day judges. They were the men who may be said to have begun the circuit system of travelling King's Justices to attend what we now call our Assizes.

These "itinerant judges" as they were called, had a tremendous influence upon the development of English Common Law. One can visualise the conversations that took place between them on their return to London from one of these judicial excursions. Inevitably they would talk over the cases they had been called to hear, and would take a keen interest in how their brother judges had dealt with certain legal problems which might have arisen.

One would tell the other just how he had given his judgment and the nature of his findings, with the result that when his colleagues met a similar legal poser, they would render the same judgment.

In this way the law throughout the country began to be unified and the principle of "precedents", upon which so many present day legal judgments are based, was established. Instead of there being one law for one district or county, and another law for another district or county, the law throughout the land became centralised and uniform.

Not that these judges made the law in the full sense of the word. Rather did they declare what had always been the law, using their wisdom and discretion in applying it. They not only drew on the usage and custom of the old courts, they frequently introduced a touch of Roman Law—which was common throughout Europe at that time—together with a touch of Canon Law which they knew, many of them being ecclesiastics.

Roman Law was that of a highly-civilised society, and was particularly applicable to the various economic problems which were then beginning to develop on the Continent, particularly in Germany; Because it exalted the idea of the state over the individual it naturally commended itself to the governing classes who were mostly the ecclesiatics. But it scarcely touched England, which even then preferred the individual to the state. Consequently there came about a division in the course of Western European legal development into the Roman and English systems of law.

As Sir Henry Slesser (Lord Justice of Appeal) states in his book *The Law:* "Thus while the English Law was becoming a system developing from oral judicial decision, experiment and precedent, the Continental Law fell to be collected for the most part from authoritative writings". Which, I may add, were mainly the commentaries on the Books of Justinian the Roman Emperor, 527–565, who became famed for his codification of the Roman Law which he organised.

Canon Law, on the other hand, was the outcome of the activities of the Catholic Church, which had been framing its own ecclesiastic laws and gradually acquiring a wide field of jurisdiction.

The tours of the counties by itinerant judges under Henry I were not made at regular intervals. It was left to Henry II to make permanent the system of travelling justices and so give royal justice to the whole of his subjects, and to introduce the greatest reforms in England's courts of law.

To Henry II we owe the gradual growth of the "petty" or "trial jury", in which weighing of the evidence and testimony of sworn men was substituted for trial by "ordeal of battle". But it was long after the reign of this monarch that trial by jury as we know it to-day came into existence, as we shall see at a later stage. It was Henry, too, who established the Grand Jury by which accusations could be brought by a body of representatives of the community against wrong-doers who were so powerful in the land that no single individual dare accuse them.

He also established another great principle—that crime was not

merely an offence against a person, to be wiped out by a *bōt* as in primitive times, but an offence against the King's Peace and the whole of the community who lived under its protection. He centralised English government and justice to such an extent that very soon the people discovered that the King's judges could offer better justice than could be obtained in their own local courts. Thus the King's Courts gradually replaced most of the other courts and took over the jurisdiction which they had hitherto enjoyed.

More and more people took the journey to Westminster, where, in the Royal Palace which had been rebuilt by Edward the Confessor after it had been destroyed by fire, the King's justices sat to try the cases which came before them. But when litigants became so numerous that to hold trials in the Palace itself became inconvenient, the King's Courts were transferred to Westminster Hall, which became the place where for centuries English law was to be administered.

Just after he had built the Hall, William Rufus was keeping the festival of Whitsuntide in it. He entertained his noble guests with royal splendour. Hearing them remark on its size and grandeur, he said boastfully; "The hall is not big enough by half, and is but a bed-chamber in comparison of that which I propose to make". He did not live long enough to carry out his boast. He was found dead in the New Forest with an arrow through his breast.

And now, having gained some idea of how Westminster Hall came to be the seat of the Royal Courts of Justice, we can return to the story of the Hall, and consider some of the great trials and events that took place there.

CHAPTER TWO

ENGLAND'S OLDEST LAW COURT

THE Monk of Peterborough, historian of the reign of Henry II, relates how, in 1178, a body of five judges were selected by the King to act as a sort of Appeal Court on all legal matters. This court was the father of the Court of Common Pleas which had no jurisdiction over any other matters than those of legal consequences. It dealt purely with questions of law. Under the Magna Carta of John, 1215, the court was given statutory recognition by an order that these judges should not go round with the King on his Assizes, but should remain in one fixed place, later on named as Westminster.

In this manner the very first of our courts opened in Westminster Hall. At a later stage the King's (or Queen's) Bench Court, made its appearance there together with the Courts of Exchequer and Chancery. Other smaller Courts, to which I shall refer later on, were also held there. Thus, Westminster Hall became England's Royal Courts of Justice.

There they functioned through the centuries that followed, from the early years of the reign of Henry III, who came to the Throne in 1216 as a boy of nine, a year after the signing of Magna Carta.

Strange and wonderful to present day eyes would have been the scenes in this historic Hall. One might have beheld regal Chief Justices and noble Barons donning their official robes in open court, to the din and clatter of rival tradesmen building their stalls and crying their wares in the body of the Hall.

The Courts themselves were little more than wooden pens divided by partitions jutting out from the walls and separated by a low wooden rail or fence, from the glove shops, book shops, cafés and shops run by the seamstresses who were engaged in making up legal robes and wigs.

Pickpockets reaped a rich harvest; it was a common sight to see "witnesses" walking up and down the heavy flag-stones which formed the floor, a straw poking conspicuously from a shoe. They were the professional "witnesses" ready to swear on oath any perjured evidence required of them, on payment of a fee. Hence the origin of the phrase, "a man of straw". They were just as ready to stand bail for any malefactor, no matter how heinous his crime, providing the necessary remuneration was forthcoming beforehand.

Not that there was any lack of dignity about "my Lords the King's Justices", for, although they sat on raised benches in their respective "pens" like teachers in a modern Sunday School, listening to counsel addressing them amid the din of shouting tradesmen, they took themselves and their courts very seriously.

Any breach of decorum was punishable with dire penalties, such as cutting off the culprit's right hand. But even this prospect did not prevent litigants indulging in free fights over their disputes.

In contrast to these spectacles, Westminster Hall was the scene of historic State ceremonies. From this Hall young Richard II was carried fainting with fatigue from the banquet held to celebrate the mockery of his Coronation. From that same Hall, twenty-two years later, he passed, a sad and broken monarch, having been forced by Parliament to abdicate his throne, condemned to perpetual imprisonment.

Standing in this Hall, one can almost visualise the figure of Charles I stalking its length clad in black velvet, there to be condemned to the scaffold by the seventy judges who presided at his trial. There too—four years later—one might have seen Oliver Cromwell sitting in the chair which had been used at the Coronation of England's kings, an ornate, richly embossed Bible in one hand, the sceptre in the other, as he solemnly became Lord Protector of the State.

And, if one had passed Westminster yet another four years later, one might have beheld Cromwell's skull grinning between those of Ireton and Bradshaw as they rotted upon the pinnacles that adorn the building.

What pageantry there must have been during some of the great trials at Westminster Hall. Sir Thomas More (beheaded in 1535, beatified in 1886) was tried there. So, too, was the Duke of Somerset, Protector of England in 1547, who endeavoured to enforce the use of the first Book of Common Prayer and later was executed on a technical charge. Yet there were periods when the drab prosaic legal actions of everyday life were all that stirred the sombre atmosphere of Westminster Hall. Days when commoners appeared before the Court of Common Pleas to settle their disputes; days when in the High Court of Chancery, people of humble birth as well as those of higher rank claimed the right of having their cases tried in equity. The Court of Exchequer dealt mainly with matters involving Royal or public revenue.

The King's (or Queen's) Bench Court was concerned with cases of a civil or criminal nature; thus criminals of every kind found their

way to this historic place to be tried. The last trial of a commoner of any note to take place there, was that of the Tichborne Claimant in 1873, one Arthur Orton, who claimed to be the heir to the Tichborne estates, and went to fourteen years penal servitude for what is said to be one of the most sensational impostures in the history of the world.

The earliest trials of Peers by their Peers also took place in Westminster Hall; to-day brass plates mark the spot where great nobles stood their trial for various offences.

Of the trials held in Westminster Hall none was grimmer perhaps than that of Sir Thomas Turbeville in 1295 on a charge of high treason. The modern treason trials, even such as that of William Joyce, and the subsequent unspectacular execution of the guilty, pale into insignificance by comparison with a trial like that of Turbeville.

Taken prisoner at the siege of Rheims, Sir Thomas was induced to become a spy for the French against England. Leaving his two sons as hostages, he returned to his native land where he gave out wonderful stories of his "escape". Gaining the confidence of the king he promptly set to work to send such information to his French masters, as enabled them to effect landings at Hythe and Dover. At the same time he inflamed the Welsh to a rising at a moment when the Scots were causing great trouble.

His treachery was discovered and he was brought to trial at Westminster Hall. His journey thither from the Tower of London is described in picturesque detail in the *Chronicles of Bartholomew Cotton* who states:

"He came from the Tower mounted on a poor hack, in a coat of ray and shod with white shoes, his head being covered with a hood and his feet tied beneath the horse's belly and his hands tied before him. Around him were riding six torturers attired in the form of a devil, one of whom held his rein and the hangman his halter, for the horse which bore him had both upon it."

In those days death for the traitor was made as painful and ignominious as possible as will be seen from this narrative which continues:

"In such manner was he led from the Tower to Westminster and was condemned on the dais in the Great Hall there. Sir Roger Brabazon pronounced judgment upon him, that he should be drawn and hanged, and that he should hang so long as anything should be left whole of him; he was drawn on a fresh ox-hide from Westminster to the conduit of London and then back to the gallows and there he

is (*sic*) hung by a chain of iron, and will hang so long as anything of him remain.''

A humiliating and painful end, no matter how greatly Turbeville deserved it for the betrayal of his country. Yet there were occasions when the central figure of such an execution attained the role of a public hero, not unlike some of the notorious criminals of more recent times.

In the reign of Edward I, Sir William Wallace, Scotland's national hero, whose army defeated and almost destroyed the English Army at Stirling Bridge, was captured and brought to trial at Westminster Hall. As Guardian of Scotland he had ruled wisely and well. That was in 1297. A year later he was conquered at Falkirk, but sought refuge in a mountain retreat. In 1305 he was treacherously handed over to the king and after a sensational trial during which he was ''crowned'' with laurels as a humiliation for having declared that he would be crowned in the Hall of England's king, Wallace was sentenced to death.

He was arraigned as a traitor, but made bold reply that he could not be a traitor to a king to whom he owed no allegiance. Proudly he faced his accusers and unflinchingly heard his sentence. Taken forthwith to Smithfield where he was to die, his last living journey on earth was more like a triumphal procession, for his courage had aroused great sympathy.

Many a tear was shed as the handsome Scot was dragged at the heels of his horses to the high gallows, and, later, as he swung from the scaffold; then, the hangman cut him down, disembowelled him and performed other mutilations before cutting up the body and distributing it for exposure in parts as far removed as London Bridge, Newcastle, Berwick, Perth and Aberdeen.

Not so popular was Sir Robert Tresilian; and it must have been a moment of great chagrin when, in 1388, he was dragged from a house in Palace Yard into Westminster Hall where he had presided as Lord Chief Justice to Richard II. He was there asked what he had to say against the charge of treason with which he, together with the Archbishop of York, the Duke of Ireland, Earl of Suffolk and Nicholas Brambre, one time Lord Mayor of London, stood impeached.

His craven heart failed him and he could find no words to urge in defence, whereupon he was sent to his death.

After having been drawn through the jeering crowds on a hurdle from the Tower of London to Tyburn he refused to mount the gallows. Beaten with clubs, bruised and bleeding, he was forced to climb the ladder leading to the scaffold. Then came a flash of

bravado. Turning to the hangman he cried out, "You can't hang me so long as I have any Thing on."

A vain boast as Thomas Salmon in his *Critical Review of State Trials* so graphically explains.

"Whereupon he (Sir Robert) was stripped and certain Images were found like the Signs in the Heavens, and the head of a Devil painted, and the names of many Devils written in Parchment; which, being taken away he was hanged naked for some Time and then his Throat was cut; and his Body having Hung till Morning, was given to his wife, who buried it in Grey-Friars."

Year in and year out trials such as these were taking place in Westminster Hall; not all of them so spectacular or of such great moment. Alas, the records of lesser trials were not regarded as worth keeping, and details are few and obscure. Yet minor criminals came before the King's judges and were dealt with according to the justice of that day, while other litigants appeared to make their claims before one or other of the Common Pleas, Chancery or Exchequer Courts. There were trials for murder, piracy, slander and libel, thefts, robberies, rape, conspiracy, and even old-time forms of smash-and-grab raids and the confidence trick.

The biggest mass trial ever to take place in Westminster Hall was in 1517 when 480 men and 11 women appeared there with ropes around their necks charged with riot and assault upon foreigners on Evil May-Day.

Henry VIII appeared in person at this trial together with the Dukes of Norfolk and Suffolk, the Lord Mayor of London and a host of other nobles. Cardinal Wolsey made intercession for them, while three queens—Katherine, Mary of France and Margaret of Scotland —"long on their knees begged pardon" so that the King forgave them. Whereat, it is recorded, the prisoners gave a "mighty shout of joy, throwing their halters toward the top of the Hall".

It is strange that, among all the brass plates set in the floor and elsewhere in Westminster Hall, commemorating the important trials held there, there should be none to mark the occasion of the trial of Guy Fawkes and his fellow conspirators in 1605. There is, however, a bill for 23s. 9d. in existence, for setting up the iron spikes on which the heads of these traitors were impaled after execution.

One of the trials held in Westminster Hall made many people believe that James I connived at murder, and they cannot account for the fact that he pardoned the Earl and Countess of Somerset after they had been convicted in 1616 of poisoning Sir Thomas Overbury, except through his own guilty knowledge.

Overbury had received his title through friendship with Viscount Rochester—formerly a page in a noble family, but at this time the "favourite" of the king. Frances Howard, mature and beautiful even at the time of her marriage to the young Earl of Essex at the age of thirteen, fell violently in love with Rochester for whom Overbury (being the scholar) wrote impassioned love-letters to his mistress.

Rochester conceived a plot for the lady to procure a divorce from Essex so that they could wed, but this did not suit Overbury, who felt that he might lose his position at Court once his friend had come under the influence of the passionate Lady Essex. He spoke of her in far from gentlemanly terms. Unfortunately for Overbury his friend repeated the words to her ladyship, who promptly set to work to get rid of her enemy. By dint of subtle scheming, she got him put into the Tower, and prevailed upon a Mrs Turner—keeper of an immoral house, and, incidentally, the inventor of yellow starch—to send in to the prisoner tarts and delicacies flavoured with sublimate of mercury, arsenic and diamond powder which caused the death of Overbury.

Having obtained her divorce, the lady was married to her lover who was created Earl of Somerset, and she became one of the reigning beauties at Court.

But a young apothecary's boy who had been spirited out of the way to Holland began to whisper that which he knew; the news got back to England, and the Earl and Countess together with Mrs Turner came to trial at Westminster.

All three were found guilty, Mrs Turner being duly hanged. To the amazement of everybody the Earl and Countess were pardoned, and it was suggested that the reason for this act of clemency was that the Earl had threatened to expose at his trial his life with the king, unless the latter promised to pardon him in the event of a conviction.

Three years silence was the strange sentence passed upon Henry Sacheverell, Doctor of Divinity who was impeached in the House of Commons and brought before the Lords in Westminster Hall in 1684 on the charge of "High Crimes and Misdemeanours". This consisted of preaching two sermons said to be "malicious, scandalous and seditious Libels, highly reflecting upon Her Majesty (Queen Anne) and Her Government" and, "tending to alienate the Affections of Her Majesty's good Subjects, and to create Jealousies and Divisions".

For nearly two months did the worthy doctor appear in the Queen's Bench Court, his journey to and fro being marked by "Numbers of

People huzzaing and Praying for his Deliverance as the coach went by."

And then, 68 of the 120 peers assembled, found him guilty. He was ordered not to preach for three years, and his two printed sermons were burnt "before the Royal Exchange at the Hands of the Common Hangman".

One of the most important cases decided in Westminster Hall was that of the East India Company against Thomas Sandys in 1685, before the judges of the King's Bench Court.

Sandys had been thoughtless enough to "trade to the East Indies . . . against the will of the said Company to the Prejudice Impoverishment and manifest Grievance of the same".

Charles II had granted Letters Patent to the Company giving them the exclusive right to "freely traffick and use the Trade of Merchandise by Sea" to and from the East Indies.

So Sandys was brought before Chief Justice Jeffreys of Bloody Assize notoriety to "answer the cause", and he raised the plea that under a Statute of Edward III which declared that "The sea shall be open to all Merchants to trade where they please", he was entitled to send his ship, *Expectation*, to trade at the various ports mentioned in the petition.

After a long hearing, however, judgment was given for the Company, all the judges being unanimous, holding that "none could Trade with Foreigners without the King's Licence". So Thomas Sandys had to confine his trading exploits to other parts.

And so on through the ages, Westminster Hall was the scene of trials as varied in substance as they were sensational in essence. But never did the Hall echo more loudly than to the prolonged cheers which greeted the acquittal of the Seven Bishops in 1688, who were prosecuted on charges of libel at the instigation of James II.

I have mentioned the varied nature of the charges brought against prisoners in Westminster Hall. Take for example that of a Dane named Svendsen in 1702 for abducting and "feloniously marrying and carnally knowing", a young heiress named Pleasant Rawlings, "for the Lucre of the Estate and Substance" of this seventeen-year-old girl.

Svendsen and three others were charged under a law of Henry VII which made it a felony to take a woman away against her will and force her into marriage. Miss Rawlings was captured and driven to the Star and Garter Tavern in Drury Lane. On the way, the carriage was held up by bogus bailiffs who declared that the girl was a "cheat and owed money". Another conspirator, posing as a

"justice" agreed to release her on bail, but no bail being forthcoming she was told that if she were married "it would put an end to it". Svendsen was brought in, the party went to the notorious Fleet Prison where the chaplain carried out the ceremony. Fortunately her guardians discovered the plot, and the conspirators were brought to trial. Svendsen pleaded that the girl was in love with him, that she had "shown him favours" before the marriage, and was a willing party to the ceremony. He was found guilty, however, and sentenced to death.

Our story of Westminster Hall would be incomplete without some reference to the notorious Earl Ferrers. After his trial there in 1760, he made his journey to the gallows clad in the dove-coloured, richly-embroidered coat and breeches which had been his wedding suit, and was driven in his own luxurious landau drawn by six fine horses.

He had been found guilty of the murder of his steward, Johnson. After the steward's death the Earl tried to escape and, armed with three pistols, a blunderbuss and a dagger, he threatened to kill anyone who tried to take him. But a burly labourer seized him and carried him cursing and struggling to gaol.

When brought to trial, Ferrers at first pleaded insanity, but afterwards admitted that he had only done this in deference to his friends.

His drive to Tyburn was a most impressive spectacle. Apart from his own ornate carriage, there were the vehicles and chariots belonging to the various sheriffs attending the execution. These followed the doomed man's own landau together with a coach containing mourners. Behind this came the hearse in which his remains were to be carried from Tyburn to its place of burial, drawn by six high-stepping sombrely comparisoned horses.

Bravely he mounted the scaffold and called for the executioner, who, according to custom, begged forgiveness from the man he was about to launch into eternity.

"I freely forgive you," declared the Earl in an unwavering voice, and drew from his pocket five guineas which he intended to hand to the hangman. In the stress of the moment, however, he handed it to the latter's assistant with the result that there was a violent quarrel over the division of the spoils, afterwards described as follows: "Whereupon an unseemly dispute arose between those unthinking wretches which the Sheriff quickly silenced."

It was a less tragic sequel that attended the trial of the Fifth Lord Byron when he stood before his Peers charged with the murder of

his cousin, a Mr Chaworth, after a duel with the latter as the result of a quarrel on the subject of poachers.

The quarrel took place in the *Star and Garter* tavern, Pall Mall, London. At its height, Byron asked a waiter to show them into an empty room. There, by the flickering light of a candle, the cousins fought a duel with swords. Suddenly there was the violent clanging of a bell, and when it was answered, Chaworth was found severely wounded and in a dying condition.

A few months later, in 1765, Byron was taken in a coach escorted by armed guards to Westminster Hall, there to be tried by his Peers. The executioner's axe was placed by the side of his Lordship as a grim reminder of his possible fate, but when a vote was taken he was found "Not Guilty of Murder".

This, according to a special Statute affecting Peers, was tantamount to an acquittal, so "the bad Lord Byron" went free. Thereafter, the sword which he had used in the duel and which had killed his cousin, was kept as a trophy hanging upon the wall of his bedroom.

It was an equally happy outcome for the beautiful Duchess of Kingston in 1776, after one of the most spectacular of any of the trials of Peers by their Peers. As Elizabeth Chudleigh before her marriage, the Duchess was one of the outstanding beauties of her day, and as daring as she was lovely.

As Maid of Honour to the Princess of Wales, she had many suitors but it was to the Duke of Hamilton she gave her heart, that young blood being equally impassioned. Reluctantly he went on a tour of Europe with his sweetheart's promise to marry him on his return. The girl's aunt, with other ends in view, intercepted the letters sent by the Duke to Elizabeth, with the result that the temperamental girl, in a fit of pique, secretly married Captain Hervey, a younger son of the Earl of Bristol.

The marriage was kept a secret because Elizabeth would have lost her position as Maid of Honour. She was having too good a time at Court to sacrifice these advantages for such a minor thing as marriage, especially as she detested her husband who had been sent abroad almost immediately after the ceremony.

It was at this moment that the Duke of Hamilton, still deeply in love although greatly perturbed at what he thought was the inconstancy of his sweetheart, returned from Europe. He taxed her with breaking faith and failing to answer the letters he had sent her. Thus did Elizabeth learn of her aunt's trickery. The infatuated Duke was still prepared to marry her, but there was her secret marriage to

Hervey. She dared not tell her lover, and this time it was the Duke who lost patience and married a Miss Gunning, another reigning beauty of that day.

In her rage and chagrin, Elizabeth plunged into a whirlpool of riotous gaiety, and gained such notoriety for her wildness that Horace Walpole wrote of her, describing her as he glimpsed her at a ball, saying, "Miss Chudleigh was Iphigenia, but so naked you could have taken her for Andromeda".

Suitors came and suitors went while Society wondered why Elizabeth did not marry. The position was brought to a climax when, despairing of ever getting rid of her unwanted husband, she decided on a daring scheme. Journeying to the church of her secret marriage, she used her wiles to such effect on the clerk who held the register, that he left her to search through the records. Hastily she turned up the page on which her own name figured with that of Hervey, and tore out the leaf containing the record of the union.

A few weeks passed, and Elizabeth was congratulating herself that she had successfully removed all traces of her marriage to Hervey, when her husband suddenly, and quite unexpectedly, succeeded to the Earldom of Bristol.

Elizabeth was nothing if not an opportunist. Although unwilling for any sort of reconciliation to her husband, and not enamoured of the title of Countess, she realised that Hervey was now the possessor of great wealth and vast estates, which in the event of his death, she would inherit. But now, there was no record of her marriage in the marriage register; so Elizabeth once more made a journey to the church, and with the page which she had previously extracted from the register carefully concealed, she again got hold of the precious records, and re-inserted the missing page.

But she still kept secret the fact of her marriage to the Earl with a view to possible eventualities.

Then the aged and wealthy old Duke of Kingston asked her to become his wife. There were many attractions to her becoming the Duchess of Kingston, but there was that damning record of her previous marriage which she had placed back in the marriage register; if she married the Duke, she might be open to a charge of bigamy. That was a prospect which she had no desire to risk, as bigamy was a capital offence in those days.

Elizabeth Chudleigh (as she was still known) decided to live openly with her new lover, who showered every luxury that wealth could give upon his mistress.

Not very long afterwards her husband, the Earl of Bristol, wished to

marry a young lady at Bath, and he brought a suit against Elizabeth to dissolve their marriage. This was the very first time that anyone, other than the two parties concerned, knew that Elizabeth was a wife.

The revelation created tremendous excitement and gossip in Court circles where this young beauty shone so radiantly.

For some unknown reason, not unassociated perhaps with the resourceful Elizabeth, no evidence of the secret marriage was ever produced. Hence the court ruled that she was a spinster, and the delighted Duke of Kingston married her. He built for her the fine house which bears his name at Rutland Gate, in London, and from that time, enjoying the favours of the King and Queen because of her ducal rank, Elizabeth Chudleigh-Hervey, Duchess of Kingston, took a prominent part in the social life of that day.

When her husband died he left her his entire fortune, and Elizabeth's real troubles began. A nephew of the Duke was far from satisfied with the testamentary dispositions of his uncle. Moreover, a disgruntled servant of the Duchess came forward with a story of the previous marriage, the result of which was an indictment against the Duchess for bigamy, the very charge she had so cunningly sought to avoid.

Meanwhile the lively Elizabeth was disporting herself in Rome, whither she had taken herself, she declared, "to seek solace from her bereavement". There, in a cardinal's palace which had been allotted to her by Ganganelli, a Pontiff of Rome, she entertained the best society on a lavish scale. In the midst of her gaiety came the summons to England to answer a criminal charge.

In 1766, she appeared in Westminster Hall. Behold her then, still in the full flood of her mature beauty, kneeling until the Lord High Steward bade her rise to hear the indictment. In ringing voice she pleaded "Not Guilty".

"God send your ladyship a good deliverance," quoth the learned Clerk of the Court and the trial began. Looking on were the Queen and the Prince of Wales with other members of the Royal Family. The great Hall was packed to suffocation, for Elizabeth had elected to be tried by her Peers as was her right. She also pleaded "Benefit of Clergy", an ancient and archaic privilege by which, originally, members of the Clergy stood outside the criminal law, and could not be tried in a lay court, but only in an ecclesiastical court. It was first legally recognised by Edward I in 1274, and later the privilege was extended to all laymen who could read the words of a certain verse of a certain Psalm. In 1513, there was a modification

of the privilege by Henry VIII. Later, it was found that prisoners who could not read learnt the necessary words off by heart, and when brought to trial repeated them parrot-like. The whole thing became laughable, and in 1827 "Benefit of Clergy" was abolished by George IV.

At the trial of Elizabeth Chudleigh, Duchess of Kingston, the Attorney General of that day urged strongly that the accused should not be granted this privilege. Had he succeeded, the lovely Duchess would have suffered one of two fates. She would either have been executed, or, in the words of Sir Thomas Smith in his *De Republica Anglorum*, be "burned forthwith in the presence of the Judges in the brawne of his (or her) hand with a hot yron . . ."

For five days Society flocked to Westminster Hall to see the Duchess on trial. For five days the streets outside were thronged with vociferous, clamouring crowds waiting to hear how this popular woman would fare. At the end of that time, the noble Lords who sat in judgment brought in a verdict of "Guilty—but not intentionally".

In a closing speech, which held the Court spellbound by its eloquence, the Duchess in all humility emphasised how "infinitely awed" she was "by the respect due to you, my honourable judges".

"Madame," responded the Lord High Steward gallantly, "you will be discharged on payment of the usual fee."

So ended this dramatic mixture of romance and crime.

It would require a volume in itself to tell the stories of even a tithe of the trials held through the centuries in that great Hall. Each one provided some new aspect of law and justice, sometimes, as the occasion arose, necessitating the passing of some new Act of Parliament to meet the requirements of the period.

There was the trial of Lord Baltimore the libertine and his female servant for rape; the impeachment of Warren Hastings, and his subsequent trial which spread over a period of seven years (1788–1795); the trial of Lord Valentia in 1796, for adultery; the trial of Lord Cochrane, found guilty of frauds in public funds in 1814; the triumphant acquittal in 1820 of Queen Caroline, wife of George IV, who left amid the ringing cheers of both those inside the Hall and the frenzied crowds which had gathered in the streets outside. She had waged a successful fight against a Bill which had been introduced to dissolve her marriage to the King whose affair with Mrs Fitzherbert occasioned so much comment.

Not all the trials held within Westminster Hall were as spectacular as those I have mentioned. All through the centuries that it was the

home of the Royal Courts of Justice, every type of case, and every class of individual came into one or other of its courts.

Ordinary civil actions were fought out within its walls in exactly the same way as they are fought out in the Law Courts in the Strand to-day. Litigants brought their pleas there, while criminals of lesser note than those I have dealt with were called upon to take their trial on various charges. None of these was more spectacular or created more public excitement and interest than the two trials connected with the claim of Arthur Orton, said to be the son of a Wapping butcher, to be Sir Roger Tichborne, heir to the famous and wealthy Tichborne Estates.

Roger Tichborne was born in 1829, and lived mostly in Paris. Because his father did not approve of his attachment to his cousin Kate, he sent Roger abroad. Sailing from Valparaiso to Rio de Janeiro, his ship the *Bella* was lost with all aboard, and was never heard of again.

For years Lady Tichborne hoped on, circulating advertisements throughout the world for news of her son. One reached Wagga Wagga in Australia, where one known as Arthur Orton had lived for some years, earning thirty shillings a week as a herdsman. Orton got in touch with a lawyer, laid claim to be the missing Roger and sailed for Europe. In Paris he was recognised by the dowager Lady Tichborne as her son. Other friends of the family who had known the real Roger also recognised and financed his claim.

He brought a suit in Chancery. The hearing lasted 103 days, Orton being in the witness-box for 27 days. At the end he was non-suited and was branded an impostor. At once he was arrested on a charge of perjury, and in the same Hall where he had laid claim to the Tichborne estates he was tried for felony. This trial lasted 188 days—from May 1873 to February 1874. At the end he was sentenced to fourteen years penal servitude. Scarcely any trial had excited such interest and feeling. The whole country was divided into two camps, the one believing the claimant's story, the other convinced that he was an arrant imposter.

Henry Hawkins, that astute and vitriolic counsel who afterwards became Mr Justice Hawkins, prosecuted, and he was hissed and booed in the streets after Orton's conviction. Dr Kenealy, who conducted the defence of the claimant at his second trial, was implicit in his belief that Orton was in truth the missing Sir Roger Tichborne. He raised a tremendous agitation for a retrial and, backed by many who had known the real heir, and still believed in the claimant, the doctor put up for election to Parliament at Stoke-on-Trent, making

Orton's case the basis of his election campaign. He was returned with a majority of over 2,000.

Up to the time of his death the Doctor remained convinced that his client had been the victim of a miscarriage of justice. And for many years after the claimant's death in 1898, there were still people who clung to the belief that his amazing story was true and that Orton was a greatly wronged man.

This was the last of the more sensational trials staged in Westminster Hall, but not quite the last trial of all. That was a libel action brought by a Mr Richard Belt against a Mr Lawes as the result of information given by the latter to *Vanity Fair* and published in their columns.

The libel was that Lawes declared Belt had falsely claimed to be the author of several works of sculpture, such as the statue of Dean Stanley and the busts of Charles Kingsley and Canon Conway, whereas they were the work of other sculptors. Lawes also stated that Belt was incapable of doing any artistic work whatever, and that he was only a "statue-jobber and a tradesman".

The case came before Baron Huddlestone in the Court of Exchequer and the hearing took 43 days spread over nearly a year; but at last, on December 28, 1882, the jury, after a four minutes retirement, found a verdict for Mr Belt, and awarded him £5,000 damages.

So the curtain was rung down on Westminster Hall as the Royal Courts of Justice and the oldest law court in the land; that ancient monument in which so long and proud a chapter in the history of England's laws and justice had been so boldly written.

A court has sat there since that time. In the early twenties of the present century, when the volume of work at the Law Courts in the Strand was so heavy, a small part of Westminster Hall was partitioned off—almost like olden times—and Mr Justice Darling was called upon to preside at the hearing of one or two cases. But so draughty did he find it, that his tenure was of short duration.

CHAPTER THREE

THE SHERIFF'S COURT

THE office of Sheriff is the oldest office in the land, and the Sheriff's Court is a survival of the most ancient court of law. Mathers in his *Sheriff and Execution Law* states "Except for Kingship, the Shrievalty is the oldest office in the country and the only secular office remaining from Saxon times."

Under various titles, Sheriffs have presided over courts from Anglo-Saxon days. They exercised their judicial powers long before William the Conqueror landed on these shores. And they still continue to exercise judicial functions in the Sheriffs' Courts existing throughout the country to-day.

Traces of the office, although records are inevitably scanty, are to be found as far back as the seventh century. In a document of Athelstan's reign, 924–940, there is reference to *Reeves* having been appointed to carry out certain duties in connection with districts called *Scirs*, although the first real mention of the *Shire-reeve* does not appear until about 1018 in the reign of Canute.

This is of interest because the word Sheriff is a corruption of *Shire-reeve*, who was a local worthy appointed to administer the primitive justice of that time in the particular *Shire* or County which he more or less governed. *Shire-reeve* was derived from the Anglo-Saxon *Scir-gerefa* meaning bailiff or manager, but when Canute created *Shire-reeves* he invested them with powers of jurisdiction very similar to those enjoyed by the Anglo-Norman Sheriffs of later days. In effect they were magistrates of olden times, but with infinitely more control over the lives and the trading customs of the citizens within their shire or county.

There were *Reeves* as long ago as the reign of Eadric, King of Kent, 673–688. They were the headmen of the *vills* and townships into which the country was divided at that time. The Reeve was a bailiff or steward of some authority, and one of the earliest rules laid down in Eadric's time stated that if a Kentish citizen went to London for the purpose of buying cattle, he must do so only in the presence of a Kentian Reeve. So that well over a thousand years ago there were "controls" and "restrictive practices" not unlike those of to-day. The Reeve was also responsible for keeping the peace in his particular area.

But the office of the *Shire-reeve* was of much more importance, and the holder wielded much greater powers. He took over the duties of the Ealdorman or Alderman, a nobleman who had hitherto been the chief officer in the County, presiding over the County Court, or *Shire-moot* as it was called in those days. As a direct representative of the King in his county, the Sheriff was responsible for collecting all the royal revenue, keeping the king's peace, and carrying on the local government of his County. In addition, right from Anglo-Saxon times, he had to ensure that all free men between the ages of fifteen and sixty would be available for military service. If the occasion arose he was supposed to take the field at the head of all the military forces of his county. It was his duty to suppress riots of any kind, and a relic of this power remains to-day in that it is the Sheriff or his appointed officer who is called upon to read the Riot Act in the event of such a disturbance.

In a previous chapter I have referred to the Hundred Court, which, you will recall, dealt with smaller cases such as personal actions and appeals. This court was presided over by a bailiff acting as the deputy of the Sheriff, and originally sat once a month. But twice a year the Sheriff held what was called a full Hundred Court when he himself presided and administered the justice of the period. At the same time he asked about the crimes which had been committed in the Hundred since his last visit, and presented a series of set questions to the Reeve of each *vill* in the Hundred, who had to provide a jury of twelve men. This was not a jury as we know it to-day, but a body of men who decided whether or not there was a *prima facie* case which called for the attention of the Sheriff.

These twice yearly visits became known as the *Sheriff's Turn.*

On these journeys through his Shire, which were not unlike the Circuit visits of His Majesty's Judges at the present time, the Sheriff imposed his august presence upon local landowners for hospitality. As he invariably travelled with a fairly large retinue, this entertaining of the Sheriff became an expensive business. After several complaints from those who suffered the honour of his company, Edward I introduced an Act in which it was laid down that Sheriffs should "not stay too oft" at one place.

But it was in the County Court (*Shire-moot*) that the Sheriff reigned supreme. Although its business was largely of a civil nature (because crime as such did not exist to the extent that it did later on) it was the court in which the chief legal business of the country was carried on. It was in fact the Sheriff's Court in the full sense of the term.

As William Craddock Bolland, M.A., states in *The General Eyre* "The County Court was, I think we may say, the most important in a popular sense of all our early English courts, as it is certainly one of our most ancient institutions. . . . It was the court where the ordinary man ordinarily sought justice."

A. T. Carter in his *History of the English Courts* emphasises this point as follows: "The general legal business of the country was still transacted in the Shire Court. The real ruler of the Shire, the president of its Court, was the Sheriff, or to give him his Latin name ViceComes.

"The Norman Sheriff was a formidable person. He was the King's outpost officer, he watched the King's fiscal interests, he accounted for money due to the Crown from the County, he was head of the military force of the shire (till he was displaced by the Lord-Lieutenant in the reign of Mary), he was responsible for policing his country, and could call out the *posse comitatus* to arrest a felon. . . . His judicial functions link him up with his Scotch brother of to-day. He was the Royal executive officer; to him came the Royal writs, and he executed them with all the weight of the Royal authority behind him."

From which you will gather the Sheriff has played a very great part in the keeping of law and order in the country throughout many centuries, and in the general development of the system of justice that prevails to-day.

William I realised that the Sheriff, with his intimate knowledge of local people and conditions in his County, would be invaluable. He increased their powers both judicial and civic. Hitherto Earls and Bishops, with the Sheriff as a kind of underling, had presided over the County Courts, which must not be confused with our present day courts bearing that title, but the Conqueror decided to place the Sheriff in complete control of the lay courts, the Bishops retaining their powers of jurisdiction over the Ecclesiastical Courts only. Thus, as Mather puts it, "The result was that the Sheriff was left supreme in the Shire Courts at the head of every department of county administration."

His duties became more numerous and more onerous. But such was the power he enjoyed that the office of Sheriff was generally much sought after, with the result that the more powerful families vied with each other to attain this rich official plum. They even contrived to make it an hereditary office. In fact the Shrievalty of Westmorland remained an hereditary office in the family of the Earl of Thanet up till the year 1849 when the appointment of Sheriff passed to the Crown.

Nor were all Sheriffs of the male sex. Many women held the office, one of the earliest, and certainly one of the most romantic and adventurous, being the lovely Nicolaa de la Haye, daughter of Richard de la Haye, the hereditary Constable of Lincoln Castle where she was born in the year 1150.

Nicolaa was a lady of great spirit and independence. Twice was she wed, and on each occasion she insisted on remaining Nicolaa de la Haye. She was first wed to Fitz Erneis who possessed vast lands and properties over which Nicolaa became the mistress and which passed to her on the death of her husband. She did not long remain a widow, for two years later she married Gerard de Camville who at great cost had bought the Sheriffdom of Lincoln.

The second husband was a friend of Earl John, who later became King, and took part with the latter in rebellions against King Richard. On one occasion while her husband was away she successfully defended Lincoln Castle against forces said to number a third of the feudal forces in the land, who had come to seize the castle on behalf of Richard.

Later, when John came to the throne, he chose Lincoln Castle as the place to receive the homage of William of Scotland. On her husband's death Nicolaa retained all his Shrieval powers although a nominal Sheriff was appointed. And so well did she exercise these powers on behalf of the evil John, that on his death-bed he committed the County of Lincoln to her as conjoint Sheriff.

Ela, Countess of Salisbury, was yet another who added lustre to the office of Sheriff in early days. When, in 1196, at the age of eight she became her father's sole heir, her mother spirited her away to a castle in Normandy until she should reach her majority.

But William Talbot, a troubadour, discovered her hiding place and brought her back to England. She was a Royal Ward, and hence Richard Coeur-de-Lion had the right to make her wed the natural son of Henry I and the Fair Rosamund as she was called. William Longespee was his name, but through his marriage to Ela, he was created Earl of Salisbury. His bride became the Sheriff of Wiltshire, and remained in that office until she retired into the Abbey of Lacock, which she built, as its Abbess.

There were other women Sheriffs in other parts of England from time to time. Two sisters lyrically named Isabella and Idonea de Veteripont were jointly the Sheriffs of Westmorland with Roger de Leybourne in the reign of Edward I; and at a later date Anne de Clifford succeeded to the office with the worthy motto, "Preserve your loyalty, defend your rights".

And, lest it be thought that women Sheriffs passed away with medieval times, let me report that in the year 1923, Mrs Lucy Green Wells was appointed Sheriff of the City and County of Canterbury.

To-day there is no such thing as an hereditary Sheriff, and although much of the significance of the office has vanished, Sheriffs do still enjoy considerable authority. They have to collect for the Exchequer all fines imposed by the Crown. They have the power of arrest, and in the event of riots can invoke military aid. Other legal duties include the witnessing of executions taking place within the confines of their county.

Among other functions they have to perform is the serving of writs of process. If it should happen that the King is a party to such writs, then the Sheriff may break down the doors of a house and even remove the tiles from the roof to gain access. If it should be a private writ they may only enter a residence "when the door is open or when admission can be gained by stratagem or by other devices without force".

As I have pointed out earlier on, the Sheriff was the presiding officer in the local courts, and, while the law and the verdict in any case brought before him was declared by the "doomsmen", the Sheriff's function was to see that the "doom" (or judgment) was duly enforced.

Thus it was a very high and important office that the Sheriff held in those ancient days both before and after the Conquest. It was not merely the administration of local justice through his Hundred and County Courts, and the dealing with "thefts, scuffles, blows and wounds" which were within his jurisdiction. He had also to collect the King's dues, and, under the Assize of Clarendon (1166) keep a register of all the wanted men in his County and see that they were brought to book for whatever offence they had committed.

When the system of itinerant judges became the vogue, his duties were even more onerous, and his lot was not always a happy one, for if he failed in the least degree in carrying out these duties, he was *amerced* (or fined) very heavily for his negligence, or his chattels might be seized on behalf of the King, as we shall see when we come to the chapter on Assizes.

He represented then, as he does to-day, the King at all State and Civic functions in his County; but even so, the time came when all men were not ambitious to become Sheriffs, as records in the time of Henry I reveal. They mention instances where nominees to this proud office were glad to pay a fine of 100 marks to avoid the honour.

On the other hand there were those who were pleased to pay, and pay well for the office.

At this point we may turn for a moment from the County Sheriff to the Shrievalty of the City of London. In the first place the City can boast two Sheriffs who are elected by the Liverymen of the various Guilds of the City. But, like the *Shire-reeves*, their origin is obscure; the most that can be said is that this ancient and historic office has existed for well over a thousand years, and traces of it go back to the seventh century in one name or another.

It may have been during the reign of Alfred the Great, 871–901, at a time when he was inaugurating the local Government of London on lines similar to those obtaining in the Shires, that the *Port-Reeve* became firmly established. Port in this case meant City. From the fact that a record of those *Port-Reeves* or Sheriffs who have held office since the days of Edward the Confessor, 1041–1066, can be seen to-day, it is clear that they existed long before this time.

And, just as the Shires had their courts of law, so did the City of London have its courts. The County Court of the Shire appeared as the Court of Husting in the City, while the Hundred Court of the Shire found its counterpart in the Wardmoot of the City. To this day Wardmoots are still held once a year in the various Wards of the City, when the occupants and ratepayers can elect their representatives on the Court of Common Council for the coming year.

Although the City Sheriffs are elected by the Liverymen, their appointment has to be approved by the King, and there is a very picturesque ceremony in connection with the official procedure on these occasions.

The ceremony is connected with an old tenure custom originating in 1237 when the Sheriffs of the City were granted a piece of land from one Walter de Bruin, a farrier who had bought it from the King for the purpose of building a forge. The land was situated in the County of Salop, and Walter made payment of six horse-shoes and sixty-one nails. The forge no longer exists, of course, and the land has long since passed from the possession of the Corporation of London; but the ceremony still goes on.

In olden days it was performed on the occasion when the Sheriffs of London and Middlesex attended the Court of Exchequer, and the Crier of the Court made the ancient proclamations. To-day it is carried out by the City Solicitor before the King's Remembrancer at his office in the Royal Courts of Justice in the Strand.

At the time of writing, the King's Remembrancer is Sir Percy Simner, K.C.B., D.S.O., D.L., whose duty consists of keeping the

records of all important papers and documents on behalf of His Majesty the King. A proud office, for he is the Senior Master of the Supreme Court. The City Solicitor is Sir Anthony Frederick Ingham Pickford, B.A., who attends to all the legal business of the City of London Corporation.

After formal approval of the elected Sheriffs has been given by the King, the City Solicitor attends upon the King's Remembrancer, and the quaint ceremony begins.

First comes a proclamation by the City Solicitor.

"Oyez! Oyez! Oyez!" he cries, "Tenants and occupiers of a piece of waste ground called 'The Moore' in the County of Salop, come forth and do your service, upon pain and peril that shall fall thereon."

He then takes a hatchet and cuts a faggot (a bunch of small twigs) and with a billhook cuts a second faggot.

Next, he makes a similar proclamation calling upon the "tenants and occupiers of a certain tenement called 'The Forge' in the parish of St Clement Danes in the County of Middlesex", bidding them come forward to do service, as before, and then tenders the horse-shoes and nails specially kept for that occasion.

"How many have you?" asks the King's Remembrancer, to which the City Solicitor replies, "Six Shoes."

"Good number," remarks Mr Remembrancer, and then asks, "How many nails have you?"

"Sixty-one," is the solemn reply, and again Mr Remembrancer replies, "Good number." And the seven-hundred-years old ceremony is over for another twelve months.

An equally picturesque and ancient ceremony marks the election of the County Sheriffs whose names are put forward by their Corporations on November 9 of each year. Then, on the morrow of St Martin, November 12, these names, three in number from each of the various Counties, are listed by the Chancellor of the Exchequer and the judges of the King's Bench Division; the first name is usually "pricked" by the King in Council at Buckingham Palace, in the following February or March.

This "pricking" is done with a "heavy gold-headed bodkin" on the parchment Roll which bears the names submitted, and once more we have one of those memorable links with the traditions of the past. The custom dates back to 1461, while our earliest complete Sheriff's Roll dates from the reign of Henry VIII.

At one time the selected name used to be marked with a dot or tick, and the origin of the "pricking" ceremony is said to have originated with Queen Elizabeth who happened to be walking in the

gardens at Windsor one day, when the historic Roll was presented to her for selecting the names. She was carrying a bodkin, and with an impetuous gesture, she used this instrument to indicate her will. This custom of pricking has been followed by every monarch since.

After the Conquest there grew up side by side with the Sheriff's Courts, other Courts, called Baron or Manorial Courts. These were the private Courts usually held under feudal conditions. The Lords who possessed these manors, given them by the King for services rendered, had the right to hold such courts on their domains, execute their own private judgments and levy their own private fines.

Many of them, alas, became greedy of their powers. Instead of restricting themselves to deciding actions for debt between the tenants on their manor, they exceeded their legal rights in the administration of justice, usurped Kingly powers and passed sentence of death upon felons.

Sentences were very informal in those days and there was a lack of the majesty which accompanies our sentences to-day. It was sufficient, then, for the Lord's steward, who usually acted as judge, to remark casually of a felon who had been found guilty, "Take him away and let him see a priest". The prisoner was taken away and strung up by the neck to the nearest tree.

Records exist of the Constable of the County appearing at the door of a Manorial Court held in the ancient monastery at Bridlington in Yorkshire in 1643. Standing there, he proclaimed the time-honoured formula, not unlike that in use at the modern Assizes, "All manner of persons who owe suit or service at this Court now to be holden in this Manor, draw near and give your attendance".

On this occasion one Christopher Jackson stood charged with the sinister sounding crime of "blood and fray on William Harker".

The two men had a fight in the local churchyard after a religious service, but made it up and went to a local Fair. There they disported themselves upon a see-saw until William playfully jumped off his end of the plank at the moment that Christopher was in the ascendant, with the result that the latter crashed on to his head and fractured his skull.

For this "blood and fray" William was fined, the fine going into the pocket of the lord of the manor.

At the same Manorial Court on the same date, the presiding Lord, after having dealt with sixty people who had been "named" for throwing their slops and rubbish out of the front door into the street, called for Jane Key to be brought before him. But no prisoner appeared, and the Constable was at pains to explain that at the last

hearing, the Court had ordered him to whip her from the Bayle to the High Street. Before he could carry out the sentence, Jane had met with an accident and broken her neck.

My Lord frowned. He did not like the thought of his Court being flouted in this way, but the Constable hastened to assure him, "Every morning I rubbed her neck with neatsfoot oil, and when it was better, I whipped her as ordered."

During the adjournment, the Bench, as it would be to-day, took some of the money collected as fines, and sent out the official Ale Taster to bring back beer for the jury.

An important fellow was this Ale Taster, who rejoiced in the occupation of "tasting" or "conning" the ale in all the many taverns and hostelries, to make sure that they came up to a certain standard. There was no such thing as "under-proof" beer in those days.

The Ale Tasters were ordered to perambulate the taverns and sample the beer from every cask in every place they visited. And these good men and true would take solemn oath "to have diligent regard to all sellers of strong drink, and to see that they sell only that which is good and wholesome for men's bodies."

They would then be instructed to leave untouched those casks of good quality, but those containing "musty liquor" must be carried into the streets and their contents poured into the gutter. Besides tasting the various beers, they had to decide the price at which it must be sold. This was called the Assize of Ale. There was a similar Assize of Bread in which price and quality were likewise regulated.

Following this interval for the refreshment of the jurors, there came before the Bridlington Court a lady of good family, a "socialite" of that day, who stood charged with having built a wall in extension of her house, which encroached on the common land to the extent of two feet.

This was certainly a grave breach of the law as it stood at the time, and under ordinary circumstances would have been severely punished. But the lady, a Mrs Hustler, appeared in person to argue her case. Having pointed out how for years she and her family had done everything they could to improve the lot of the towns-people, both in money and in service, she concluded her "speech for the defence" by naïvely remarking "Surely you cannot begrudge me a couple of feet of the common land."

Again my Lord frowned, for here was a member of his own class; a very worthy member at that. But the Law had definitely been broken, and he would not have it said of him that there was one law

for the rich and another for the poor, and he imposed a fine of forty shillings.

At once the learned clerk of the court rose to his feet and whispered into the ear of the judge, just as I have seen them do in more recent times, both in the High Court and in the Magistrates' courts, when his Lordship or his Worship has overstepped his powers in awarding a penalty.

On this occasion, in 1643, the clerk pointed out to the Judge that only the Sheriff could exact a fine of forty shillings or over. Whereupon my Lord snapped out. "Thirty-nine shillings and elevenpence."

Any fines extracted from the wrongdoer went into the private purse of the Lord or Baron, and in the course of time the Sheriffs of that period also began financially to feather their own nests. As I have explained, part of a Sheriff's duties was to collect the King's revenues, which he would hand over to the Exchequer on his twice yearly visits to London. Perhaps he thought that he could make better use of some of the money thus collected by way of taxes and fines. Whatever his reason, his appetite for more riches resulted in the King's coffers suffering very considerably.

It was this very greed which largely resulted in the ultimate loss of power suffered by the Sheriffs and the Barons.

The King's advisers began to wonder how many of the Sheriff's and Baron's Courts were assuming more power than they had any right to. They began to ponder how many of them were illegally pocketing fines and *amercements* under these powers, and confiscating the lands and chattels of those whom they convicted of crime, to the detriment of the King's Exchequer.

It was in order to make inquiries on the spot into these questions that the General Eyre was set in motion. The governing purpose was not so much the altruistic administration of justice as the gathering in of as much money as possible, and we shall see later on, in the chapter on Assizes, how this purpose was rigorously and ruthlessly carried out.

The Assizes of Clarendon in 1164 was one of the outcomes of this investigation of the Justices in Eyre into the honesty and integrity of the Sheriffs, and that, with the Assizes of Northampton in 1176, limited the power of the Sheriffs to dealing with petty crime.

The Assize of Northampton made the system of itinerant justices permanent and regular and to this extent robbed the Sheriff of much of his local judicial powers. Under the Inquest of Sheriffs in 1170, there had already been a dismissal of many of the sitting Reeves and

replacement by others who were pledged to see that the revenues of the King found their way to the proper quarter, the Exchequer. But still the Sheriff clung to his powers and it was not till 1217 that he ceased to try felonies at his "turn".

It was the entry of the justices of the peace into our legal system under the Statutes of Edward III in 1327 and 1330, that finally undermined the judicial powers of the Sheriff. These Statutes made provision for the calling of "good and lawful" men in every county to be responsible for keeping the King's Peace, and punishing the wrongdoer; they had to commit those against whom charges were brought, to await trial by the king's justices. Later on, in 1344 and 1360, other Acts empowered them to try prisoners themselves, and in 1388 another Statute ordered that they were to hold their court four times a year.

That was almost the end of the Sheriff so far as his criminal jurisdiction was concerned, but he did not give up without a struggle and he still continued to exercise his powers whenever he could, in excess of those he actually possessed by right. It was stated that Sheriffs were judging and condemning innocent persons "by indictments and presentments affirmed by jurors without conscience and not having the needful freehold qualifications within the county". It was urged that "they used to pack juries with their own menials and charge them falsely to extort ransom".

In 1461 an Act was passed ordering that no Sheriff upon his own authority should "attach, arrest, imprison or fine any alleged wrongdoer".

In effect this was only a restatement of the rule set down in Magna Carta that, "No Sheriffs, Constables, or other Bailiffs of ours shall hold the places of our crown".

You will observe then the gradual winnowing down of the Sheriff's jurisdiction in criminal matters. He still retained many judicial and administrative duties which he possesses to this day.

Some of his powers and some of his duties are peculiar to his office. He prepares the panel of jurors for Assizes and is liable for the safe custody of prisoners. He is responsible for the payment of jury fees to those sitting upon juries in his county. He must also see that His Majesty's judges are properly housed and entertained when they attend his County Assizes.

These are only a few of his manifold duties. But what of his judicial powers, and what of the Sheriff's Court over which he, or his Deputy Sheriff, presides? Up and down the country in the various counties, these Courts, survivals of Anglo-Saxon days, still flourish

and, although robbed of much of their judicial powers, play a useful part in the administration of justice.

At the north-east corner of Red Lion Square, just off the bustling thoroughfare of Holborn, London, there stood until recently an unpretentious building which for years had housed what was perhaps the oldest court in the world with a continuous history.

Search as you might, you would have found no mention of it in any encyclopaedia nor in any of the many guides to London.

Yet, there it stood, as it had done for ages, surrounded by narrow streets and alleyways, unheeded by the throngs which daily passed it by, apparently unconscious of its very existence.

Only a board pointing round the corner and bearing upon it the notice, "To the London Sheriff's Court"—not to be confused with the court of the Sheriff of the City of London—gave any indication that one of the most ancient judicial officers in the land sat from time to time in this three-storey, flat-fronted building to hear the special cases which came before him.

It was in this court, though not in the same building of course, that Ine, King of the Saxons, was first represented by his judges round about the year A.D. 690. And through this same court our laws continued to be administered century after century, sanctioned by King Alfred, Canute the Dane, and William the Conqueror.

Not that there was anything court-like about the exterior of this house, which resembled more a private dwelling-place or a suite of solicitor's offices. In fact it was all three combined; court, dwelling-place and solicitor's office as well. For nearly 250 years it belonged to the Burchell family, a family of solicitors who had their offices in this house, and who, over a century ago, rebuilt and converted some stables at the back of the house into a court-room. Prior to that it had been the residence of a doctor.

There, member after member of the family, as Deputy-Sheriffs, presided over this privately-owned court, the only remaining court of its kind in the country. None of them ever acted for a private client.

But, alas, this venerable building, so long a link with the ancient past, was destroyed by enemy bombs in May, 1941, since which time the London Sheriff's Court has been held in a hall hired from the Law Society at their premises in Carey Street.

It is pleasing to record, however, that a Burchell still administers justice in that court in the person of the present Deputy-Sheriff, Mr Tufnell Charles Burchell, and I was privileged in November 1950 to be present when an inquisition was held under one of the ancient processes of law known as a *writ of eligit*.

Let us see the type of case with which this Sheriff's Court deals to-day.

At one time it used to hear Compensation cases under the Land Clauses Act of 1845, but does not do so to-day. At one time, too, the High Sheriff of London dealt with "detinue, trover and scandal" in this court, but to-day it sits mainly to decide the amount of damages to be awarded in "running down", "breach of promise" or slander cases. These are cases in which verdicts in default have already been found for the plaintiff in the High Court, failing the appearance of the defendant.

I remember one of the last cases of slander to be tried in the old Sheriff's court in Red Lion Square in March 1938, when a Mrs Molly Wheeler was awarded £832 damages against the Hon. Mrs Baxter for alleged slander and assault.

The incident occurred in a Pullman compartment of a train during the journey from Victoria to Eastbourne. It appeared that Mrs Wheeler was sitting in the train opposite a Princess Irene Wiszniewska when Mrs Baxter entered the compartment and, it was alleged, became generally abusive. When Mrs Wheeler left the carriage to avoid any unpleasantness, Mrs Baxter followed her, it was alleged, assaulted her and was said to have used these words:

"You are a filthy, dirty adventuress . . . I know you. You are a street woman and I am a peer's daughter."

Mrs Wheeler was a perfectly respectable woman carrying on business as a hair-dresser and beauty specialist in Eastbourne and the West End of London. She had never seen Mrs Baxter in her life before.

Both Mrs Wheeler and Mrs Baxter were legally represented but Mrs Baxter did not put in an appearance. The whole story of the incident was related in the witness-box by Mrs Wheeler. She described how, after she had left one compartment and entered the tea buffet, Mrs Baxter followed her, banged on the table upsetting the tea, and, according to Mrs Wheeler, "yelled foul language".

"She got me down by the throat," said the witness. "The Pullman man came in and got her off and shut the door. Outside she shouted, 'I know you are an adventuress and a street woman', and another nasty word. . . . I got out at Lewes and she followed me screaming the same things on the platform. All the people in the train must have heard it. Then I fainted."

All the regular routine of court procedure is carried out to the letter in the Sheriff's court. First an outline of the case by Mr John Fennell for the plaintiff, followed by her appearance in the witness-box.

Then, cross-examination by Mr Gibson Robinson for the defendant, who made no secret about his line of defence, as the following questions and answers reveal.

Are you suggesting that my client was perfectly sober when this took place?—I don't know what to say. She said she was.

According to what you say she would not appear to be?—I don't know. She walked quite all right. She said she was an earl's daughter.

You know she is not, don't you?—No, I don't know that.

Didn't she say she was the Honourable?—She gave her name to the guard as the Honourable and told him she was a director of the railway.

She was not behaving like a director, was she?—I don't know how directors behave.

Mr Robinson then made his closing speech for Mrs Baxter. It was rather a thankless task for his only hope was to influence the jury in mitigation of such damages as might be awarded against his client.

He agreed that Mrs Baxter must pay for the consequences of her acts, but suggested there was no reason why those damages should be inflated beyond the amount necessary to compensate Mrs Wheeler for what she had suffered.

It was now the turn of Mr Fennell to address the jury, and he did not shirk his task.

"It was a cruel assault," he declared, "a cruel and uncalled for slander. It was made by a woman who says she is a peer's daughter but who has forgotten the obligations of nobility. I am not going to mince matters," he went on, "the defendant is apparently a woman of social position. She has betrayed that position and she has betrayed her class. She has defamed the good name of a very respectable lady, and, in doing so she has chosen to use the language of the gutter. Why should Mrs Wheeler be subjected to that language? The defendant has attempted to put the stamp of infamy on a very decent home, the home of a lady with four sons."

No King's Counsel could have excelled this closing speech either for point or oratory. It echoed around the ancient court and obviously made an impression on the jury.

From time to time throughout the hearing, the quiet voice of the late Mr Tufnell Burchell—father of the present Deputy-Sheriff—was heard putting in a question here and a question there to clear up some little obscurity, or bring out some point of evidence. Now it was his turn to sum up to the jury before they retired to consider their verdict.

He told them they would probably conclude that as no apology

had been tendered on behalf of the defence, this fact went to prove the malice of Mrs Baxter.

"You can hardly imagine," he continued, "words more damaging and more cruel than were used of a respectable married woman on this occasion. . . . The defence has offered no explanation of this very regrettable occurrence, and even to-day, although the defendant is legally represented, you have had no apology and no hint of sorrow for the pain that has been caused to the plaintiff.

"Why the defendant slandered the plaintiff we do not know. We have not been told, nor do we care. This is a case in which you can award punitive damages, or, if you like vindictive damages. That is a matter for you."

The jury then retired; that they performed their duty with the same regard for the oath they had taken, as is shown by other juries in other courts, is evident from the fact that it was over an hour before they returned from their deliberations and announced that they awarded damages to the amount of £832 against Mrs Baxter.

To some who have appeared in the Court it was the death-chamber of a cherished romance; for there, the value of broken hearts was assessed in the form of damages for breach-of-promise. Many are the love stories which have been unfolded before the Deputy-Sheriffs who have sat there, and, not so many years before the Second World War, one might have heard the voice of counsel reading aloud the burning words of love and passion contained in letters that had passed between two lovers.

In a corner of the court sat the plaintiff, a pretty woman in her early twenties, now seeking solace for the loss of her sweetheart. The defendant was not present in court. He treated the proceedings with the same contempt that he had treated the previous proceedings in the King's Bench Court, where judgment had been given against him.

The pretty girl entered the witness-box and told the story of her lover's wooing and the course of their now dead romance.

"When he came to London at week-ends," she said, "he had his meals at my lodgings."

"And you paid for them?" prompted counsel.

But the Deputy-Sheriff interrupted with a hasty "No, no—that will not do. You can't put meals into your claim for damages," he pointed out. Then, after the whole sorry recital had been gone through, he emphasised to the jury once more that the provision of meals is not considered part of the outlay towards marriage.

"What you have to decide," he told them, "is how much you

think the plaintiff really spent in anticipation of the wedding and what compensation is due for injury to her feelings."

The jury were not long in coming to a decision, and the girl walked off the richer by £100 in return for the amount she had spent on pots and pans, and on household linen, when the course of love was running smoothly.

There followed a "running down" case in which a motorist had knocked down a pedestrian. A verdict had been given against him in default when he failed to attend at the original hearing in the High Court. Now he was present and represented by a solicitor who had been instructed to try to keep the damages as low as possible.

A doctor was called and stated that the injuries received were such that the plaintiff would never properly recover; the injured man himself limped into the witness-box and re-told his story of what had happened. The jury retired, damages were assessed and the parties left the court.

Such were the types of case heard in this ancient London Sheriff's Court, and similar cases have been heard throughout the years in other Sheriff's Courts throughout the country.

To-day, as I have stated, the court is held on the premises of the Law Society, and it was there I betook myself one November morning in 1950 to hear a case under an old writ which had its origin in the time of Henry VIII. A case was heard under a *writ of eligit* as long ago as 1580.

There was an echo of the language of that time in the charge read out to the jury in 1950, stating:

"Your charge is to inquire what lands, tenements, rectories, tithes, rents and hereditaments Jack Smith or anyone in trust for him was seized or possessed of on the 20th day of September or at any time afterwards, or over which the said Jack Smith on the 20th day of September or at any time afterwards had any disposing power which he might without the assent of any other person exercise for his own benefit, and also to inquire and say what is the yearly value thereof that the same may, at a reasonable price and extent, be made to be delivered to Tom Jones to hold the said lands and tenements, rectories, tithes, rents and hereditaments respectively according to the nature and tenure thereof, to them and their assigns until the said sum of £500 together with interest as aforesaid have been levied."

I have altered the names, dates and amounts, but what it all came to, as Mr Tufnell Charles Burchell, the Deputy-Sheriff presiding on this occasion, explained, was that "the plaintiff is owed a certain sum and the defendant is in possession of certain lands, and the

plaintiff wants possession of those lands that he may draw the rents until such time as the debt is paid.''

The jury having been sworn to ''well and truly try'' what ''lands and tenements etc. etc.'' the defendant was possessed of, a witness produced the rating books of a London Borough Council, and proved that the property was held by the defendant, and that the rateable value was so much. The jury then found ''possession proved'' and rendered ''a true verdict according to the evidence'', and the plaintiff went off legally entitled under this centuries old procedure, to draw the rents on the property of the debtor until such time as the amount had been recovered.

From which you will gather that the cases tried in the Sheriff's Courts are varied if few in number. They are not so many as in the days of long ago, when his jurisdiction was so much wider. But what he has lost in judicial duties he has more than made up in his civil and administrative work. There is probably no greater pageantry attached to the Sheriff's office at the present day, than when, as the King's representative of his County, he sallies forth in all the splendour of his robes of office to meet His Majesty's Justices on their arrival in the County town where the Assizes are to be held, usually heralded by a fanfare of trumpets.

From that moment until the Assize is over, he is in constant attendance upon his Lordship, who is his guest in the official Judge's Lodgings as they are called. Each day he conducts him to and from the Court, and sits with him daily until every prisoner has been dealt with and every civil case has been settled.

The City of London Sheriffs perform similar duties in connection with the Central Criminal Court, more popularly known as the Old Bailey. One of them has to be present to attend the judges at both morning and afternoon sessions when the Court is sitting, and takes part in the ceremonial procession. Each of the two Sheriffs takes his turn in entertaining the High Court Judges of the King's Bench Division to luncheon, and in generally supervising their comfort and well-being.

CHAPTER FOUR

THE ASSIZE COURTS

THROUGHOUT the country, for the most part in the various county towns, are the Assize Courts. They are a sort of legal clearing house, where, three times a year, His Majesty's Judges of the King's Bench Division, in all the panoply of their robes of office, and surrounded by the pageantry of centuries, attend to try the criminal cases which have been committed from the various police courts throughout the County for which the Assizes are being held, and also such civil actions as have been set down for hearing. They are a legacy from those days when the King himself, often in person, journeyed to the different towns to administer the justice of the realm in the early local courts.

Some of the Assize Courts are very ancient buildings. Others are more modern in structure; but none of them lacks the traditional majesty of English justice.

Among the oldest is the Hampshire Assize Court situated in the city of Winchester. The Assizes there are held in the precincts of Winchester Palace and Castle, on the western wall of which there still hangs in St Stephen's Hall, King Arthur's famous Round Table. For nearly three centuries Assizes were held within this very Hall; to-day the judges sit in a more modern building, but still within the Palace, from which one gains access to the Court.

Legend has it that the Palace was founded by King Arthur in the year 523, but recent historians give its origin at a later date not precisely known. That there was a castle and palace in existence before that built by William the Conqueror is certain, for it was in its vicinity that, in 934, Colbrand, a gigantic Dane, was killed in single combat by Guy, Earl of Warwick. In the year 1002, Ethelred the Unready was in occupation when he ordered the massacre of every Dane in the kingdom. The patriotic women of that day took part in the general slaughter that followed, attacking their Danish bedfellows and either hamstringing them or cutting their throats.

The building was enlarged by King Stephen in 1142 after he had recovered it from the Empress Maud, who, to save herself from an unpleasant fate, concealed herself in a leaden coffin and was carried out as a corpse.

It is in the reign of Henry III, 1216, that we first hear of the

Palace being used as a state prison and for holding the Assizes of the itinerant judges. Henry sat in person here and presided over the trial of a most desperate band of robbers and murderers, ordering the execution of "upwards of thirty-three". On another occasion, while acting as judge, he ordered the gates of the city to be shut, and assembled a jury of the principal inhabitants on the spot to discover the powerful criminals who were creating havoc in the area. When they failed in their duty, he had them "cast hard bound into the dungeon beneath the Castle".

County towns are very jealous of their ancient rights and proud of the prestige which attends the holding of their Assizes. Not so very long ago England's smallest county, Rutlandshire, was in danger of losing its Assizes because of its crimeless record.

In May 1947, Mr Justice Croom-Johnson held the first Assize at Oakham, the county town, that had taken place there for 24 years. Even then, the one case in the calendar had been remitted from Buckinghamshire. The court was held in the 12th century Oakham Hall, at one time an impressive looking castle built by the Norman Walkelin de Ferrers. Only the main hall now remains standing. Inside the hall on this occasion, stood the judge's bench, a witness-box and the prisoner's dock. Behind the judge, and on the feet thick walls surrounding him, hung hundreds of horse-shoes presented in accordance with ancient custom by kings, queens and nobles to the lords of the manor of Oakham, who had the right of demanding a horse-shoe from every peer of the realm on his first setting foot in the town.

The people of Rutland were outraged at the prospect of losing their historic rights, and their spokesman, Lt.-Col. G. K. F. Ruddle, declared, "We shall fight with all the strength at our command. Our only sin is that we are too good."

When last the court had sat at Oakham, the presiding judge was presented with a pair of white kid gloves to commemorate a "crimeless list". This is one of the quaint customs which has come down through the years, and is carried out at every Assize when, rarely, there are no cases for the judge to try.

The word *Assize* originates from the Latin *assideo*, meaning "I sit". Originally it referred to an assembly of knights and other substantial men of the county together with a bailiff or justice, which met a a certain time or place to deal with public business.

After Henry I began sending out his travelling justices it came to be associated with the regular periodical sessions, at which the assizes or verdicts of the juries in each county were taken by the Judges trying the various issues brought before them. This is the only

sense in which the word is used as an existing term of English law.

Although William I sent somebody down from his Westminster court to deal with an important case on one or two occasions, it was left to Henry I to originate the system of travelling justices in earnest. In the Anglo-Saxon Chronicles of 1124, for instance, it is reported:

"In the same year after St Andrew's Mass before Christmas, Ralph Basset and the King's thegns held a *Gewitenemote* at Hundehoge in Leicestershire, and there hanged so many thieves as never was before, that was in that little while, altogether four and forty men, and six men were deprived of their eyes and emasculated."

But, as I have already stated, although Henry I originated the system, it was Henry II who developed it and made it permanent by the Assize at Northampton in 1176. In that year he sent six circuits of three judges up and down the country, and in 1178 found on enquiry that it had not worked too satisfactorily. Recalling his eighteen judges, he set up a special court at Westminster, appointing five men, two clerics and three laymen who were to hear all complaints and try all actions brought before them.

This was the *Curia Regis*, or King's Court when used in its judicial sense, and was a distinct advance on pre-Conquest times when the King and his Counsel, the *Witan*, were regarded as the fountain of law and justice, and when the monarch stood forth as the guardian and declarer of those customs and usages which he had gleaned from the chiefs and wise men of the various communities. By this time the *Curia Regis* acted in a purely judicial capacity, having been separated from its governmental functions. It was thus a *Court* in the true sense of the word.

About 1179, too, the exact date is uncertain, Henry II instituted what was called the Grand Assize. This was later described by Ranulf de Glanville, Chief Justiciar of England, 1180–1189, famous lawyer and counsellor of Henry II, as a "Royal boon". It certainly was, for by its operation the ordeal of battle was wiped out, and a tenant against whom a writ of right had been obtained could avoid this grim means of proving his claim to the property in dispute. Instead, he could demand that his case be heard "by a jury of twelve sworn knights of the vicinage (neighbourhood) summoned for that purpose by the Sheriff". They would decide whether or not "A" had wrongfully and without legal process, seized the land of "B".

This was a very important step forward in the evolution of law and justice in England. It was in fact a step towards certain features of present-day court procedure. For the first time we have mention of a jury acting in the sense that we understand it to-day, finding a

verdict on the facts presented before them. They were also witnesses in the sense that they were sworn to find their verdict upon their own knowledge of the circumstances or upon knowledge gained from such unimpeachable sources as they would feel bound to accept as though the evidence was their own.

Yet another effort of Henry II to see that justice was done, was made when, in 1180, he divided England into four sections and sent his representatives into each section to carry out certain judicial duties. His King's Court judges remained at Westminster. Those who travelled on circuit were not professional lawyers, for, as Ralph de Diceto explains, "Now he sends out abbots, now earls, now chaplains, now men of his household, now his most intimate companions to hear and try cases."

These men, from various stations in life, were the predecessors of His Majesty's Justices of Assize who go on circuit to-day. Nor did Henry himself shirk judicial duties, for he attended an action at Clarendon between Abbot Walter and Gilbert of Balliol. His Justiciar presided, the latter's office being equivalent to that of the Lord Chief Justice to-day. The King intervened in the discussion, arguing that the royal charters held by the Abbot were valid and "had cost him dear". But it was the unanimous verdict of the court that gave judgment, and not the King.

Later, in the reign of John, 1199–1216, a clause in Magna Charta promised that two *justiciarii* should be sent down to the Assizes four times a year. This was in accordance with the feeling of the people that, whereas local justice was often prejudiced by the fact that knights of the County presided over the courts and might be biased, a royal judge was less likely to be influenced by local affairs.

Thus, gradually the law was being brought into line with human needs. But it must not be thought that all the reforms which were introduced at this time were altruistic in motive. I have already pointed out in the last chapter how the Sheriffs and Barons became shorn of much of their jurisdiction through their lust for increased power and their greed. I have indicated how they exceeded their judicial powers, in many cases usurping the King's rights, and robbed him of his revenues.

It was largely to put an end to this state of affairs that itinerant justices were sent round the country. The Sheriffs and the Barons had made a profitable business out of extorting fines and *amercements* on all sorts of charges and complaints, to the detriment of the King's Exchequer, and one of the main reasons for the introduction of

travelling justices was to supervise the way in which these gentlemen were carrying out their duties.

They were out to fill the King's coffers at all costs, and they did their job with rigid and merciless thoroughness.

W. C. Bolland in his *The General Eyre* puts it bluntly when he describes the activities of the Eyre as a "terrible engine of oppression and extortion" with "unlimited powers of imprisonment and amercement . . . which made it a thing apart from all other judicial commissions of the middle ages, which made it a terror and abomination in the sight of all men."

Mr Bolland also emphasises the mercenary character of those first Eyres (those courts or journeys of travelling justices) as follows: "Let me say bluntly at once that the origin and purpose of the earlier commissions out of which the General Eyre grew, that the main purpose of the Eyre itself, was not the administration of justice, but the gathering into the King's exchequer of as much money as possible, in any way possible."

He then quotes F. W. Maitland, the great historian and Downing professor of laws, in support. Says this authority, "To ascertain and protect the rights of the Crown is the main object; and it seems almost a by-end that incidentally crime may thus be discovered and suppressed."

And, I would point out, the Justices in Eyre made certain that the administration of justice became a profitable branch of their functions.

Let me again quote Bolland on the powers wielded by these judges. Referring to their commission to hold pleas of every kind, he states that "it 'invested' them with practically all the King's powers and jurisdiction, which set them above the law, and made them, we may almost say, kings themselves within the County wherein they were in session."

Who then were these men who held such mighty and important powers? From whence did they come?

In the first place they were simply Royal clerks with no great knowledge of the law beyond that which they had picked up in the course of their clerical duties at the King's Court at Westminster. Later on, in the reign of Richard I, 1189–1199, they were drawn from ecclesiastics who had attained such legal knowledge as they possessed from serving in the courts of Exchequer and the Chancery.

These ecclesiastics frequently found great difficulty in reconciling their Christian tenets regarding the sanctity of life with their judicial

duties, which might involve them in "blood guiltiness" through having to pass sentence of death.

Very often they overcame this predicament by rising from the Bench and allowing the capital sentence to be passed by their lay associates; or, as we have seen already, they avoided the issue by not pronouncing the actual death sentence that a felon should be "hanged by the neck", but by saying "Let him see a priest".

The result for the prisoner was the same.

In addition to what we may term the minor Eyres with which I have dealt so far, and journeying side by side with the travelling justices, was this other and much more sinister Eyre known as the General Eyre to which I have made a brief reference. This was an irregular institution, the justices of which paid their visits to County after County at various intervals. In the time of Henry II the General Eyre was supposed to visit each County once every seven years. But very often years and years elapsed between the visit of one Eyre and the next, with the result that any prisoners awaiting trial by the King's Justices of Eyre, who sat in the County Court of the Shire they were attending, had to rot in gaol.

The General Eyre was an inquisition of the utmost severity. Again it was largely a money-seeking business, more rigorous than ever. There was no appeal against the decisions of the Justices, and the most minor sins of commission or omission resulted in heavy fines or the estreating of the offenders' goods and chattels.

Notice of the arrival of a General Eyre was sent to the Sheriff of the County weeks beforehand, together with a sort of questionnaire including queries about murders, robberies, and other crimes, together with wardships, marriages, widows, Jews, fugitives, weights and measures, treasure trove, customs and a hundred and one other things. Woe betide the Sheriff if he was not fully prepared with all the information demanded of him when the Justices arrived! He had to obtain this information from the dozens of his Hundreds; and these unfortunate worthies were equally liable to suffer unpleasant consequences if they made the least error in their reports.

Mr Bolland summarizes the position thus: "Not only were the dozens responsible at their peril for making a flawless report, a report to which no exception could be made, of all these matters which had occurred since the last Eyre, but they were equally responsible for reporting all like matters which had occurred between the last Eyre and the Eyre before that one and had not been finally disposed of at the last Eyre. And the least slip or omission brought them under the judgment of the Court."

Small wonder, then, that the General Eyre was not popular either with those who had administered the law before its advent, or with those who had to wait its tardy coming before they could be dealt with or obtain redress of any grievance.

For example, in 1233, when it was announced that there would be an Eyre in Cornwall, it is recorded that the inhabitants fled to the woods to escape its pains and penalties. In 1261, too, the people of the county of Worcester rose in violent protest and literally refused to receive the King's judges on the grounds that seven years had not elapsed since the last Eyre. As late as 1372 the "poor commoners" beseeched the King that "he would permit no Eyre to be held in any part of the kingdom during the war (with France) to the troubling and impoverishment of the commons."

Meanwhile two notable developments took place; not at once, of course, nor at any particular time but, in common with most of the evolution of English law, gradually and even haphazardly.

Because of this gradual process it is impossible to give specific dates. Thus the first text-book of English law was written in 1180. It was the work either of Ranulf de Glanville, who was Justiciar or Chief Justice in 1180, or his secretary. It is not quite certain which. And it is significant that many of the decisions made in those Courts so long ago are still referred to and recognised as authoritative by judges at the present time.

But no real code of English law was published before the late 1500's.

We do possess, however, some enlightening reports of cases tried by judges in Eyre on their circuits and at Westminster Hall from the year 1292, and these continue with a few breaks until 1537 in the reign of Henry VIII. These were the books on which the Inns of Courts, those colleges of legal lore to which I shall later refer, based much of their training.

These ancient Law Reports were called Year Books. They were exceptionally valuable as a guide to both Bench and Bar—because they enabled judges to adapt early usages and customs to the requirements of their day, and made it possible for the Serjeants and barristers to formulate their arguments on points of law.

This mention of Serjeants and barristers brings me to the second notable development, the creation of a body of professional lawyers. They were the predecessors of the barristers, although they were not at first known by that term.

They formed themselves into an organization with a very high standard of professional honour and dignity, acquiring as their

headquarters the various "Inns" to which they belonged. These Inns were usually the town houses of some great nobleman such as the Earl of Lincoln. Hence, Lincolns Inn. They were originally five in number, these being Serjeant's Inn, Gray's Inn, Middle Temple, Inner Temple, and Lincolns Inn. All but Serjeant's Inn are still in existence, and continuing their good work.

There were one or two smaller "inns of chancery" but they gradually became dependent on their bigger brothers. At the moment we are more concerned with Serjeant's Inn, whose members, at the period of which I am writing, enjoyed the exclusive right of pleading in court. How they came by this right is obscure, but the fact remains that by the reign of Henry III, 1216–1272, there had arisen a number of "pleaders" in the King's Courts and, as there was no busier litigant than the King, he employed them to look after his interests. They became Serjeants-at-law, or in other words His Majesty's "servants" at law. They enjoyed special privileges beyond those of the attorneys of that day, and in fact it was not until the reign of Elizabeth that Queen's Counsel, who eventually supplanted the Serjeants, were even heard of, that lady creating the first in the person of Francis Bacon.

The Serjeants were very important people, being inferior in rank only to a knight. All the most important judicial offices were filled from their ranks, and they were joined in the commission with the judges going on circuit.

It is said by some authorities that the office of Serjeant arose during the reign of Alfred the Great, and it is certain that they practised their calling long before they were officially recognised in the reign of Edward I, 1272–1307. It was from the Serjeants that he selected those who were to be his Judges, and with their accession to this coveted position, the ecclesiastics gradually faded out of the picture so far as the secular courts were concerned. At a later stage their appointment was left to the Lord Chancellor.

Serjeants continued to hold their high position in the legal hierarchy for centuries, and up to the year 1875 Judges of the Common Law Courts could be chosen only from this select body who have been described as "that Ancient Race".

At one time they used to meet in the porch of old St Paul's Cathedral, there to offer legal aid to any person who required it and who could afford to pay for it. With judges they shared the privilege of wearing the Coif. This was a little patch of black silk with a white edging which was set on top of the wigs worn by Judges and Serjeants. Some suggest that the Coif was the origin of the Black

Cap worn by Judges when passing sentence of death.

Whether this be so or not, Serjeants have played an important part in the growth of the English legal system; and once more it is interesting to note that they continued to survive—though in rapidly diminishing numbers—right down to very recent times.

As late as 1949 the tall, white-bearded figure of Serjeant A. M. Sullivan, K.C., adorned the Law Courts, and many is the time I have sat, enthralled, listening to the milk-and-honey Cork brogue, fighting the case of a client. For years he had practised at the English Bar, a picturesque and eloquent personality. It was a great sorrow to his colleagues, when, on the occasion of Eire proclaiming herself a republic, he announced his retirement from his profession on the grounds that as a loyal Irishman he felt that he had now become an alien, and that it was his duty to relinquish his practice at the English Bar.

But we who knew him can never regard him as an alien, nor in any other guise than one of the most brilliant counsel who ever graced our courts.

With his retirement there passed the last of the Serjeants-at-Law.

I have interrupted my story of the General Eyre so that the profession of the law and the beginnings of a written code can be placed in their appropriate setting.

With those important developments established, or gradually being established, we can return to the General Eyre.

The earliest Eyre Rolls date from the time of John, but there were no actual Eyre records before Edward I, whose legislative ability earned for him the title of the English Justinian, after the great Roman Emperor, who, during his reign, 527–565, was responsible for the codification of Roman Law which he organised. It is right that we should pay tribute to this great King (Edward I) of whom Sir William Blackstone, famous English lawyer, 1723–1780, wrote: "In his time the law did receive so sudden a perfection that Sir Matthew Hale does not scruple to affirm that more was done in the first thirteen years of his reign to settle and establish the distributive justice of the kingdom than in all the ages since that time put together."

I mentioned the long questionnaire which preceded a visit of the General Eyre to each County. They were called Articles of Eyre, and Bolland says of them: "These articles formed in effect a long catechism demanding information on every sort of matter where a possible answer might afford ground for extracting an amercement from somebody, for forcing somebody to pay a fine to the King to avoid

worse things." He adds, "The cast of the net was ever widening, the meshes ever narrowing. Great and small were caught in it."

He then gives an example of the sort of questions contained in these Articles.

"Is there one in their Hundred that has made a trespass on the high road, that has taken a trout from a river in unorthodox fashion, has opened a market where he had no business to open one—I am mentioning only minor matters—or has done any one of the hundreds of things suggested in the Articles. Then let the dozen be sure that they remember it. They will be amerced for any omission when the Justices detect it, and detect it they most certainly will, for they have all the County records before them."

We can feel some sympathy with the unhappy dozens who carried such a weight of responsibility upon their shoulders. They were selected with care and knew, of course, what was expected of them.

In the first place two bailiffs from every Hundred in the County were summoned to appear before the Justices, and were ordered to select two good men and true, usually knights. The latter then appeared before the Justices and were duly sworn as follows:

"Hear this, ye Justices. Faithfully will I choose myself and the others of my Hundred, sixteen good men and true that be best informed and that truth will tell."

Having taken this solemn oath they went off and selected sixteen men, including themselves as a rule, but having done so, they struck out the names of four, thus leaving a dozen in all. These were the men who were called upon to answer the questions about their particular Hundred, and as there were many Hundreds in a county—there were some seventy in Kent alone—you can imagine how many people from one County were summoned to appear before the Justices of Eyre during one sitting.

Each dozen was given a copy of the Articles, and each dozen had to pay four shillings, a large sum of money in those days, for the privilege he enjoyed, or did not, of making his presentments.

When at length they appeared before the Justices for this purpose they were duly warned, "If the Justices find any variance between the rolls of the Coroners and the rolls of the dozens, or find that the dozens omit matters presented by the Coroners, then shall the dozen in fault be under judgment, that is to say, amerced."

You may well wonder how it was to be expected that these unhappy dozens should be aware of every detail recorded in the Coroner's rolls or how they should have knowledge of every inci-

dent that happened within their Hundred. How, for example, they could know that somebody had sent his dogs or horses to a monastery to be fed at the expense of the monks there.

Communities were, of course, much smaller in those days, but there was another factor operating against the dozens. I have mentioned that the General Eyre was very irregular in its visits and that instead of attending a county once every seven years, a much longer period elapsed between two Eyres. In 1321, for example, when a General Eyre was announced to sit in the Tower of London, forty-four years had gone by since the previous Eyre. Yet the citizens of London who were summoned as dozens, were supposed to recall and report every single incident that had taken place in the meantime, and make answer to all questions put to them ranging over this period.

It will be realised that, in the meantime, many of those who could have provided the information required, and many others who could have justified any little breach of duty during that time, were long since dead. That made no difference to the Justices, and the dozens were amerced for any failure in this respect.

Nor was the presentation of information the only duty of the dozens. According to a document in connection with the Kent Eyre of 1313, "if a dozen make a presentment against anyone, the Sheriff shall bring up such person, and when he comes he shall put himself upon the jury that indicted him."

Thus the dozen not only provided the information upon which a person might be put on trial, but they also sat as juries to find a verdict upon the evidence they themselves had produced. So they were judges and jury as well. Again their lot was a far from happy one, as Mr Bolland points out, "And we are told sometimes that when a jury, after hearing evidence, has returned a verdict of not guilty the whole twelve of them are put under judgment and amerced for having contradicted their original presentment."

One of the cases tried at the London Eyre of 1321 was that which charged John of Crombwelle, Constable of the Tower and Chamberlain to the King, with having seized a vessel containing a cargo of tiles which he had appropriated to his own use. There were other charges, and eventually he was told to come up for judgment at a later date. In the meantime, however, as is stated in the Rolls of the Eyre, John was removed from his office at the Tower because he had neglected to have the roof of the living rooms repaired, with the result that the rain had come through on to the bed of Queen Isabella, wife of Edward II, while that lady was giving birth to a

daughter, Princess Joan, who later became the wife of King David II of Scotland.

I may mention in passing that Justice Ayres resembling our English Eyres can be traced back to the time of David I of Scotland, 1124–1153, while King John introduced the system of Eyres in Ireland.

In the archives of the Public Record Office are to be found three or four Bills of Eyre, as they were called, setting out the details of the actions and charges which were tried at the various Eyres.

There is one concerning Thomas Trie of Ludlow, in which it is narrated that Thomas in 1272 borrowed twenty shillings from a Jew in Bridgnorth on the guarantee of Hugh Donvile, a local bailiff. The money was lent at a rate of interest amounting to 375 per cent. The security Thomas gave to Hugh was possession of a house. Eventually Thomas redeemed his debt, but Hugh would not get out of the house, with the result that Thomas "took him to court" as we would say to-day. This is how the Bill ends:

"And Thomas prayeth for God's sake that the truth of this matter may be inquired of by a good jury; and of this he prayeth remedy for God's sake."

The debt was contracted in 1272, but the Eyre at which Thomas brought his plaint did not take place till twenty years later. There is no record of the result of the trial.

It was not only the tardy justice which the General Eyre bought to the various counties at such irregular intervals which made it so unpopular. There was, in addition, the avarice with which it conducted its trials and imposed financial penalties on all and sundry.

Take, for instance, a case which came before the Justices of a Kent Eyre in the reign of Edward II. Many years previously, the King had issued his writ demanding that certain prisoners should be sent to him in France. There is no record to tell if the order was ever carried out. Long years afterwards an Eyre was called at Canterbury, and the Justices demanded that these prisoners should be brought to trial before them. But the original bailiffs who had charge of them were long since dead. The King's writ which they had received was nowhere to be found. The bailiffs now called upon to produce the prisoners had not the least notion what it was all about. But the Justices did not mind that. This is how they dealt with the matter, according to the Rolls of that time.

"But those bailiffs are now dead, and the bailiffs that be have no writ from the King. *Therefore there must be judgment of them for escape of the aforesaid prisoners.*"

Was there ever a greater travesty of justice?

Take another example. A man awaiting trial on a charge of theft, broke out of prison. The gaoler was promptly put "under judgment". The prisoner meanwhile had taken sanctuary in a church. Now, while he was perfectly safe so long as he remained in the church, it was the duty of the local citizens to see that he did not escape. But this ancient Jack Sheppard was very resourceful and did manage to get away.

Whereupon the whole town was put "under judgment" and duly fined, not only for the one escape from gaol but also for the prisoner's second escape from the church.

Fines (or amercements) were inflicted on every possible pretext. Failure to mend a fence or repair a road, failure to carry out any little duty which may have been reported by the dozen of the district concerned, would be made the occasion for extracting money from the individual or town as a whole.

Another point resented by the public was the law regarding stolen property. If "A" stole some property belonging to "B", and then abandoned it while trying to make his escape, one would reasonably think that the stolen property would be returned to its rightful owner. Nothing of the kind, however.

As Mr Bolland points out: "When these facts were presented at the next Eyre, the Justices would certainly rule that the stolen property, whatever it might be, was forfeit to the King, and they would straightway order that he should have it or its value: and someone was made personally responsible for seeing that he did have it." Either the Sheriff or one of the bailiffs most likely.

I could go on giving instances of this sort, but I have said enough to indicate the cause of the unpopularity which surrounded the General Eyre, and which eventually helped to bring about its doom. Sufficient to say that gradually they disappeared from the legal picture, and Assizes as we know them to-day took their place. So far as I have been able to trace, there were no Eyres after the year 1336 in the reign of Edward III.

And now, before we pass on to the consideration of the type of case tried in the Assize Courts from earliest times up to the present day, I must say a word or two about the evolution of the jury system. To-day, as H. G. Hanbury points out in his *English Courts of Law*, trial by jury is the mainspring of our Common Law procedure. It is a feature of our system of law of which we are rightly proud. Other nations in various forms have done us the honour to copy our system.

Alfred the Great is said to have begun trials by jury in this country,

but there is evidence that something of the kind was in vogue before his time, as far back as the reign of Hlothar and Eadric, Kings of Kent, 673–680. Taswell-Langmead in *English Constitutional History* states: "The use of a jury for criminal presentment and civil inquest is mentioned for the first time in the Constitutions of Clarendon (1164). The way in which the jury is therein referred to seems to imply that it had already gone into general use and favour."

One can trace a beginning of the jury system in the oath-helpers (or compurgators) of Anglo-Saxon times. Way back in the Laws of Ethelred, 866–871, it was provided that twelve freeholders of each Hundred should swear that they would accuse no innocent person or conceal a guilty one. Twelve is the usual number of jurors to-day. If a man was charged with any offence, in order to prove his innocence he had to bring up eleven oath helpers (himself making a twelfth) to swear with him, "By God that oath is clean and true." They did not, as do the jurors of our time "find a verdict according to the evidence", nor were they witnesses of fact. They simply avowed the truth of the statements made by the man who had called upon them in his defence.

Sometimes the freeholders were summoned to the King's Courts at Westminster, there to give judgment on some case which had been sent there by the Sheriff of the County for His Majesty's Justices to deal with. Twenty-four was then the number summoned, but only twelve of them sat to give judgment, the others being called to replace any absentees.

These jurors were not called in to listen to the evidence. They were simply there to render their verdict on their own local knowledge of the case. We have already reviewed the institution of the Grand Assize by which, instead of the Ordeal of Battle, a person was able to "place himself upon a jury" of his fellow men; and we have caught a brief glimpse of how the dozens of the Hundreds performed their unsought duties.

Space will not permit me to deal in greater detail with the evolution of our jury system. That the Conqueror and other Norman kings did much towards its development by incorporating the Continental jury system with that existing over here, is recorded in the various Acts of Parliament and the various ordinances which were introduced later.

CHAPTER FIVE

THE ASSIZE COURTS (*Contd.*)

STEP by step, stage by stage, the pattern of English justice was created. There were loose ends, of course, and the pattern was not always artistic, or pretty, or tidy. But always there was a striving towards that dictum laid down by the late Lord Hewart when, as Lord Chief Justice, he stated that "not only must justice be done, but it must also *appear* to have been done." One must always bear in mind that justice in all ages, in the purely legal sense, has been the administration of the existing laws. There are occasions even to-day, when the laws fall short of that high standard, and when our judges, against their better inclinations, are compelled to administer them.

I have mentioned that side by side with the early Assizes, the system of itinerant Justices known as Eyres, there evolved the General Eyre. I have given you one or two illustrations of how this General Eyre worked, and now we will turn our attention to the type of cases which came before the Assize courts.

In the reign of King John, the year 1203 to be exact, one Alice Crithecreche was charged, with others, with murdering an old woman at Lilleshall. After the crime Alice disappeared, and took with her various belongings or chattels of the victim. When she was arrested in Staffordshire, the stolen goods were found on her and in due course she was brought up at the Salop Assizes, called the *Curia Comitatus* in those days, where the Justices who tried her were constrained to mercy. Instead of sentencing her to death, they ordered that her eyes be plucked out.

Branding with a hot iron was a very ancient and frequent mode of punishment in olden days, long before the Statute of Vagabonds was passed during the reign of Edward IV, 1461–1483. This authorised the branding of a runaway slave with a V on his breast. And if the slave again escaped and was recaptured he was branded with "S" on his cheek or forehead. Church brawlers were also liable to be branded on the cheek with the letter F, indicating "fraymaker". In the Lancaster Assize Court there still hangs a branding iron, a grim reminder of this ancient punishment.

Feuds between old established families were a frequent source of litigation at the Assizes in earlier times, none being more prolonged than that between Robert Tyrwhitt of Kettleby and Sir William Ross

of Melton. Robert complained that William's steward had trespassed on his lands at Wrawby and there felled trees, taken away turves for firing, and cut down brushwood. At the Leicestershire Assizes, in about 1402, the case came before Sir William Gascoigne, the Chief Justice at that time, who found in favour of Sir William Ross.

This decision so annoyed Tyrwhitt that he assembled the men of his Manor, and waged a bitter fight against the retainers of his enemy. So fierce was the conflict that the matter was referred to Parliament, which confirmed the view of the Chief Justice and compelled Tyrwhitt to apologise humbly to Sir William.

But the feud went on and on, at length breaking out into open warfare again in the reign of James I, 1603–1625, when a pitched battle was fought between the descendants of Tyrwhitt and the followers of the Earl of Rutland, who represented the Ross family. There were many casualties, and to mark his strong disapproval, the king ordered that a gallows should be put up at Melton Ross, where the battle had taken place, and that it should be kept there for ever. Should there be any further deaths as the result of the feud, those resonsible should be adjudged guilty of murder and would be hanged on the gallows.

I believe that this gallows is still in existence on the Earl of Yarborough's estate, and is kept in repair in accordance with this centuries-old order.

Gallows were dotted about the country as prolifically as are signposts to-day, and there is a story told, in satirical vein, of a shipwrecked sailor who, on scrambling ashore and finding a gallows, fell on his knees and thanked God that he was in a Christian country.

In the year 1590 at the Surrey Assizes, held then in Croydon, John Udall appeared on a charge of felony, his crime being that he had written a book "reviling the Bishops and Clergy, and inciting the People to promote the Subversion of the Established Church which was a part of the Constitution."

This case is of particular interest because it shows that in those days a prisoner was denied the right which is extended to every poor person to-day under the Poor Prisoners Defence Act of 1903, for when Udall asked that he might have counsel it was denied to him.

Salmon, in his *Critical Review of State Trials,* describes this incident and then goes on:

"Then he (Udall) desired the Court to inform him how many of the Jury he might challenge by Law: To which they answered, they sat there to Judge, not to give him Counsel."

A very different attitude from that adopted by judges to-day, who

not only grant a prisoner legal aid but, if he should be undefended, also do all that is possible to protect him on every point of law. I have often heard a learned judge engaged in trying a case practically cross-examine a witness for the prosecution on behalf of a prisoner, so anxious has he been to make sure that the accused's case was not prejudiced, and that justice should be done.

Salmon, in his report of the case of Udall, points out that when the prisoner was "entering on his Defence", he objected that "depositions ought not to be read against him in a Capital case", but that the witnesses should be called in person.

"And the Prisoner offered to bring Witnesses to show that the Witnesses against him had contradicted themselves: *But he was not suffered to produce any Witnesses in his Behalf against the Crown.*" The italics are mine.

Udall was sentenced to death, but was more fortunate than some other writers of books. King James of Scotland was "pleased to Intercede on his Behalf", with the result that he was allowed to go free on the understanding that he would not leave the country.

In the great Hall at Winchester took place one of the most spectacular Assize trials ever held. It was the trial of Sir Walter Ralegh in 1603 on the indictment of High Treason, which charged him with "Compassing and imagining to depose and destroy the King." It was emphasised that he "met and consulted with Lord Cobham, how to advance the Lady Arabella Stuart to the Throne."

Henry Howard, Earl of Suffolk, with two Chief Justices, Popham and Anderson, were his Judges. Sir Edward Coke, the Attorney-General, and originator of the Petition of Right, led for the Crown.

We have not space to go into all the details of the trial. One can say, however, in modern language that there were "several brushes between prisoner and counsel" during the hearing, especially when Sir Edward denounced Ralegh as "the most vile and execrable Traitor that ever lived."

Ralegh was moved to retort: "You speak indiscreetly and barbourously", to which counsel heatedly replied: "I want words to express thy viperous Treasons."

But Sir Walter was not to be outdone. "I think you want Words indeed, for you have spoken one Thing half a dozen times."

"Thou art an odious Fellow; thy name is Hateful to all England for Thy pride," was the vitriolic answer.

It must have been a dramatic moment when, in that ancient hall draped with priceless tapestries and hung with the arms and accoutrements of past ages, the Lord Admiral Nottingham, beside

whom sat the Lady Arabella, rose to his feet and, in a loud voice that rang throughout the Court, declared "My Lady Arabella doth protest upon her salvation, that she never dealt in any of those Things, and so desires me to inform the Court."

But the result was a foregone conclusion, and within fifteen minutes the jury had returned with a verdict of Guilty which meant sentence of death.

Commenting on this trial Salmon remarks: "Never was Man convicted on so slender an Evidence. There was nothing but the Deposition of Lord Cobham that affected him, and that he had solemnly retracted. And even this Witness was not produced in Court, the Judges declaring that it was not necessary."

And of the Attorney-General, the same author states:

"Nothing could lessen Sir Edward Coke's Character more than his Conduct at this Trial. To see the Insolence and Violence and Scurrilous language he used to run down a man of Quality and Honour, who had been so Eminent in the Service of his Country. To see him Wrestling and perverting the Law, contrary to his own Opinion and Conscience to come at the Blood of an Innocent man; and this either to make his Court to the new King, or out of Malice to the Prisoner, must give every Man a poor Opinion of this Lawyer."

Sir Walter was not executed then, as we know, but was imprisoned in the Tower for fourteen years before he set out on various expeditions to America. He again fell into trouble over his activities against the Spanish colonists there. As a result he was taken prisoner once more and ordered to be executed by virtue of the sentence that had been passed upon him fifteen years previously. So, at the age of 66, he was beheaded in the year 1618.

We come now to one of the most revolting and nauseating trials ever heard in any court of law. I make no apology for including it in this book, for I must show the various types of cases that came before the Justices of Assize.

The trial of Mervin Lord Audley, Earl of Castlehaven, for the rape of his own wife, and for homosexual offences with his manservants, is of particular interest, because it was a trial of a Peer by his Peers which did not take place in the House of Lords where such trials usually took place, but was heard during the Lent Assizes of Wiltshire in the year 1631.

It is of interest, too, on account of the resolutions come to by the Judges on certain points of law, in answer to queries put to them by the Lord High Steward.

They found for example that:

A Peer could not be tried by a common jury, but must be tried by his Peers. That a Peer could not challenge any of his Peers or have counsel, except upon points of law. That whereas his own examinations could be taken without oath, and could be *read* to the Court, the evidence of other witnesses must be given on oath. That the wife in a case of rape, being the party wronged, could give evidence against her husband. That the Lord Triers (the Peers sitting in judgment) might eat and drink before they agreed, but they must not adjourn or separate before giving their verdict. That a Peer could not be convicted by fewer than twelve Peers. (Again you will observe that historic number *twelve*.) That if a prisoner "stood mute" (that is to say, refused to plead either guilty or not guilty) he must be hanged. That a Peer standing mute might be pressed to death (*Peine Forte et Dure*). And "that if a Man took a maid by Force and ravished her, and she afterwards gave her Consent, and married him; this would not purge the Offence, but it was still a Rape."

The evidence was of a most shocking nature, the case having been brought against his Lordship by his wife and son. Lady Audley herself gave evidence that on the second night of their marriage her husband had called one Ampthill, a former pageboy (whom the husband had compelled his daughter by a former wife to marry) into the bedroom, and forced his wife to submit to the servant's embraces.

On another occasion, she said, "her Lord (the prisoner) called his Servant Brodway into his Bed while she was asleep. That she waked and made all the Resistance she could, but his Lordship held both her Hands and one of her Legs, till Brodway lay with her."

Tearfully, she related how she would have killed herself with a knife after this incident, but that Brodway wrested it from her.

Another servant, Skipworth, gave evidence that "his Lord made him lay with the young Lady Audley, his Son's wife who was then but twelve Years of Age."

And so the sorry tale went on, until at length the Lords Triers returned with their unanimous verdict of Guilty on the charges of rape, but not guilty in connection with the homosexual offences.

The Earl was sentenced to be hanged, but, as Salmon puts it: "He obtained the Favour of being beheaded."

It was perhaps ironic justice that two of the servants who gave evidence against their master were afterwards brought to trial and subsequently hanged.

Thirty years later, in 1660, there occurred another historic trial, which became known as "The Campden Wonder", and is generally acknowledged as the classic example of a miscarriage of English justice. It was one of those rare murder trials where the "body" of the victim was not found.

One August morning in 1660 William Harrison, steward to the Viscountess Campden of the village of that name, set out to collect some rents due to his mistress. He failed to return at his usual time that evening, and his wife sent one of the servants, John Perry, to meet him. But neither Harrison nor Perry returned. The next morning Harrison's son went to find his father; on his way to Charrington, about two miles away, he met John who said he had found no trace of the missing steward.

Meanwhile, an old woman had found a hat and a comb, both of which had belonged to Harrison. The hat-band was drenched with blood. Foul play was suspected and a hue-and-cry was raised. A hundred villagers were rallied to search the surrounding heathland. But there was no trace of the missing man. Suspicion, however, fell on John Perry, who was brought before a local justice and examined. He told a wild and improbable story about having been lost on the heath in a fog. He was kept in custody, sometimes in the local lock-up, and sometimes in the village inn.

At this point his story became more circumstantial though not less wild and contradictory. First he declared that Mr Harrison had been murdered by a tinker. Then he insisted that a gentleman's servant of a neighbouring village had killed his master, and had buried his dead body beneath a bean rick. These stories were soon proved to be false, and he startled the court on his next appearance by declaring that his mother and brother Richard had slain the old man. He went into the details describing how he had come upon his mother standing over Harrison while his brother strangled him, and took from the body the bag of money which the steward had collected in rents.

He, John, had then left the scene of the crime, but understood the pair were going to throw the body in the "great sink", a large pond, behind the mill. Again search was made without result. Joan Perry, the mother, and Richard were accordingly charged the next day.

John kept to his story, and the others protested their innocence in the local court. All three were committed for trial, and a month later appeared in the dock at Gloucester Assizes.

They were found guilty and sentenced to death. Strange tales spread abroad. The mother was a witch, it was said, who had bewitched her two sons into committing the crime.

The mother was hanged first in the hope that this would lead to Richard confessing his part in the murder. But Richard still protested his innocence. John, too, declared that he took no part in the commission of the crime.

Both were duly hanged.

Two years later, William Harrison, now over seventy, and travel-worn, opened the door of his home where he had been mourned as dead, and scared the life out of a maid-servant who imagined she was seeing a ghost. And if the previous history of the case was almost beyond belief, the story which Harrison had to tell was even more incredible.

He declared that he had been set upon by three men who had kidnapped him, and taken him to sea. The vessel had fallen into the hands of Turkish pirates. Eventually he was sold as a slave to a doctor at Smyrna. He managed to escape to Lisbon, where two Englishmen took pity on him and paid his fare back to England.

Although writers and commentators differ on the truth of the steward's story, the fascinating and unexplained query remains—why did John Perry make that terrible "confession", which resulted in his mother and brother, as well as himself, being hanged for a murder which was never committed?

Had the tragedy turned his brain? Whatever the explanation, three people went to an untimely and unjustified death.

From murder we turn to a crime of a different sort.

The Great Wyrley Cattle Maiming Mystery, as it became known, resulted in the imprisonment of a man whom I am proud to count as a friend, and on whose behalf I assisted the late Sir Arthur Conan Doyle in trying to obtain a sum of money in compensation for the years of penal servitude he underwent as a result of his wrongful conviction.

It was in February 1903 that a valuable horse belonging to a Mr Holmes was found to have been ripped up during the night in a field at Wyrley, in Staffordshire. Two months later, another horse was similarly treated, while less than a month elapsed before a cow was hacked to death in the same way. In June, two more cows were slain and a horse was terribly mutilated. Three weeks later two horses belonging to the Quinton Colliery Company were ripped up; this was followed by the killing of a pony at the Great Wyrley Colliery. During these outrages, police from all over the country, assisted by hundred of villagers from the neighbouring districts, kept watch.

No trace of the marauder was found, despite the fact that, time after time, the editor of a Wolverhampton newspaper received a

number of anonymous letters. The writer of these expressed contempt and hatred for the local police, whom he called "bluebottles", and announced that further cattle maiming would take place on certain specified dates.

These letters were written without punctuation and in an obviously disguised hand, but without doubt by the same person. They declared that, within a given time and within a certain radius, horses, cattle and sheep would be ripped up. After the receipt of these letters, more animals were found dead, mutilated with a savage brutality, and the police were moved to even greater efforts to run the perpetrator to earth.

That it was somebody who knew the locality well was clear; for some of the maimings occurred in out-of-the-way places. It was a singular thing, too, that it was not the police who discovered the outrages, although they were often in the vicinity when they occurred. The discoveries were always reported to them.

It would take too long to enumerate all the details which led to the arrest of George Edalji, a young Parsee solicitor practising at Birmingham, and son of the Vicar of Great Wyrley. Suffice it to say that George Edalji was committed for trial at the Staffordshire Assizes. He refused to have bail, declaring that if in the meantime other maimings occurred it would prove that he was not responsible.

And between the time of Edalji's committal and his appearance at the Assizes a maiming did take place. A youth to whom the horse belonged, however, confessed that he himself had killed the animal; later he retracted the confession, stating that it had been bullied out of him by the police.

Edalji came to trial, and after a hearing of four days he was found guilty and sentenced to seven years penal servitude. He was also struck off the Roll of Solicitors.

Almost immediately after the conviction, and while he was in prison, letters were received by the police and the Wolverhampton newspaper, declaring the young solicitor to be innocent of the maiming outrages, and saying that the writer of the letters and his "gang" had committed them. These letters were in the same unpunctuated handwriting as the letters which Mr Gurrin, a famous handwriting expert of that day, declared at the trial had been written by Edalji. The new letters were signed "G. H. Darby", who described himself as "Captain of the Wyrley gang". In one of them, "to prove his words", he said that on a given night in a stated locality two horses would be maimed.

Investigations were set afoot, and Great Wyrley was searched,

people being interrogated on a wholesale scale in the effort to trace the identity of the mysterious writer. On the night indicated, police surrounded the district mentioned in the letter, just as they had done on previous occasions when Edalji was suspected of having committed the outrages. Not even a rat could have pentrated the cordon that was placed round the spot.

Nevertheless, two horses were maimed exactly as prophesied.

Three months later another horse was injured; in March 1904 two sheep and a lamb were mutilated. From time to time other "Darby" letters were received by police and Press. In some of them attacks on women and children were threatened, and the reign of terror that followed was even greater than it had been before the imprisonment of Edalji. The maiming of cattle continued, but the identity of the maimer was an undiscovered mystery.

At length in 1907, after Edalji had served three-and-a-half years of his sentence, the Home Secretary ordered his release, and he came back into the world, penniless, without a profession, and rankling under the injustice he had suffered. He wrote a series of articles for a Sunday paper called the *Umpire*, now the *Sunday Empire News*, on which I was crime reporter for over a quarter-of-a-century, again protesting his innocence, and asking that something should be done to make this clear.

He sent copies to Dr Conan Doyle, as he then was, and that fine gentleman, with all the skill of his fictional Sherlock Holmes, took up the case and made careful personal investigations which convinced him of Edalji's innocence. He wrote a series of articles for the *Daily Telegraph* in which he set out the nature of his inquiries and the conclusion he had come to. These articles created such a tremendous sensation that they were reprinted in pamphlet form and sold on the kerbside at one penny.

England rang with the wrongs of George Edalji. Another paper, *Truth*, took up the matter, and Sir George Lewis, the world-famous solicitor, joined issue. He demanded the setting-up of a Government Committee to examine the report.

His demand was successful, and the committee consisted of Sir Arthur Wilson, the Honourable Lloyd Wharton and Sir Albert de Rutzen. While strong in their condemnation of Edalji's conviction, and stating that they could find no evidence to connect him with the maimings, they believed him to be the writer of the anonymous letters, and he had himself therefore contributed to the miscarriage of justice.

As a result of their findings, Mr Gladstone, then the Home Secre-

tary, ordered that a free pardon be granted to Edalji; and as the latter put it to me later on, when I was engaged with Conan Doyle in trying to obtain compensation for his wrongful imprisonment, "Let there be no mistake as to what a free pardon means. It is not that one has been let off a part of one's sentence because the authorities think one has been sufficiently punished. It is not a sympathetic consideration at all. It means this! That certain new facts have come to their knowledge which make it absolutely clear to them that the convicted person could have had nothing to do with the crime for which he was sentenced."

As though to emphasise this fact, the Law Society, so jealous of the professional integrity of the legal fraternity, reinstated George Edalji on the Roll of Solicitors with permission to practise again. For nearly fifty years he carried on his professional activities. I saw him shortly before I wrote this chapter, and he was still in practice.

Letters from the mysterious G. H. Darby continued to arrive from time to time throughout the following years. There were also other cattle maimings, though they were not so frequent. Then a series of poison-pen letters were sent to various people in the Staffordshire area. They were obscene in character and contained threats of murder.

At length, not long after the Brighton Trunk Murder in 1934, a labourer was charged before the Wednesbury Magistrates' Bench with sending obscene and menacing letters through the post. He had worked at Darlaston for some thirty years, and because he put a cross against anything he had to sign, he had always given the impression that he could not write.

In one of the letters, written to the police, he told them that if they wanted to find the missing head in the Brighton torso crime, they should dig in the garden of a certain woman. As Mr Ernest Brown, who prosecuted, told the court: "Letters were sent to many people of good standing in the district and other counties, to judges, and even to members of the Royal Family. The communications despatched were filthy and vile."

Superintendent Hall, of the Wednesbury Police, produced a postcard which had been found near a colliery in August 1903, and another envelope, postmarked October 1903, addressed to the editor of a local newspaper.

"The handwriting on those two communications," stated the police officer, "was the same as the prisoner's."

Other exhibits produced showed that over all the years that these letters had been arriving, the handwriting of this man "had not varied one iota."

The prisoner, who admitted writing the letters, was committed for trial at the Staffordshire Assizes, those same Assizes where Edalji had been convicted over thirty years before. He was sentenced to three years penal servitude. There was never anything beyond the "Captain Darby" letters to connect Knowles with the maiming outrages, and both Mr Edalji and the police are quite convinced of his innocence of the crimes, but no study of the Edalji case is complete without those letters being taken into account.

If I seem to have laboured the story of Edalji, I have done so because of the extraordinary and unparalleled circumstances which surrounded it. It has always been a matter of personal regret to me that no compensation was ever granted to this much-wronged man.

The writer of poison-pen letters is always an object of psychological interest. Because it seems almost impossible to fathom the mind of a woman who was responsible for one of the most startling campaigns of this kind, and because it reveals yet another miscarriage of justice, I propose to include the following story in this chapter.

It was in 1920 that Miss Edith Emily Swan, of Littlehampton, Sussex, complained to the police that Mrs Rose Emma Gooding—who lived next door with her husband, her daughter Dorothy, and her unmarried sister—had pushed under her door several letters containing obscene libels upon both herself and others. She alleged that she had actually seen Mrs Gooding drop one of the letters complained of.

Miss Swan was advised to bring a private prosecution, and in due course Mrs Gooding appeared at Lewes Assizes where, upon her promising to be of good behaviour, the judge sentenced her to fourteen days imprisonment. I must point out that the prisoner protested her innocence throughout the trial, but the weight of evidence as sworn to by Edith Swan and other witnesses was too heavy against her.

Released from prison just before Christmas 1920, Mrs Gooding, on the advice of the police, went to live at Lewes. From the time of her release the libels started again, and in February 1921 Miss Swan reported that she had seen Mrs Gooding fling on to her doorstep yet another filthy letter. Mrs Gooding was arrested, and once more appeared in the dock at Lewes Assizes, where she was again convicted and sent to prison, this time for twelve months.

Her application for leave to appeal was refused, and Mrs Gooding then petitioned the Home Secretary for a pardon on the ground that she was innocent. The Home Secretary referred the whole case to the

Court of Criminal Appeal. While the appeal was pending, Inspector Nicholls of Scotland Yard was sent to Littlehampton to make inquiries on the spot. He very soon discovered that while blotting paper taken from the Gooding's home bore no trace of writing like that of the offending letters, on the blotting paper in Miss Swan's home there was the impression of the word "Local" which tallied precisely with the writing of the libellous letters.

A watch was kept on Miss Swan, and an astute policewoman, Miss Moss, saw her throw down a letter upon her own doorstep and then vanish indoors. The letter was found to be not a libel upon Edith Swan, but a very obscene and disgusting attack upon the wife of a policeman. It was in precisely the same handwriting as were all the other libellous missives, and was eventually proved to have been written on a leaf torn from a baker's book belonging to the Swan family.

It was now the turn of Edith Swan to grace the dock at the Lewes Assizes, on December 9, 1921, just a year after Mrs Gooding had first been convicted. Mr Travers Humphreys, later Mr Justice Humphreys, was counsel for the prosecution. For the defence it was urged that nobody had ever heard Miss Swan use bad language. This appeared to impress the judge, Mr Justice Bailhache, so greatly that he commented: "If I were on the jury I should refuse to convict." And Miss Swan was acquitted without a stain on her character.

Early in the year 1923, however, there was another spate of libellous and obscene letters and post cards in the Littlehampton area. Inevitably, some suspicion attached to Edith Swan. To put these suspicions to the test a number of three-halfpenny stamps at a local post office were secretly and invisibly marked with the letter *S*, and instructions were given that nobody but Miss Swan was to have them.

On June 23 Miss Swan bought two stamps. The following day the postmaster kept watch inside the post office and seized two letters just as that lady dropped them through the letter box. Meanwhile, another post office official was stationed outside to make certain that it was Edith Swan and no other who had dropped the letters.

The moment she had dropped the letters into the box, this man approached Miss Swan and took her back into the post office. There the stamps were developed and the tell-tale *S* revealed upon them. One of the letters was addressed to her own sister; the other, to the Sanitary Inspector, contained obscenities such as had characterised all the previous letters, and was obviously in the same writing.

For the second time Edith Swan stood in the dock at Lewes

Assizes, and on this occasion she went to prison for twelve months.

A decision given by an Assize Court judge goes occasionally to the Court of Criminal Appeal or even to the House of Lords, which is the final and Supreme Appellate Court in the country. As we shall see later on, rich and poor alike have access to this tribunal.

The trial with which I am going to deal was that of a humble van-driver, Wilfrid Andrews, who, in 1937, found himself haled before the Leeds Assize Court on a charge of manslaughter. It was stated at his trial that he drove his van at more than thirty miles an hour in a built-up area, and went on driving after he had knocked down a man, who later died from his injuries.

Found guilty by a jury of his fellow-men and sent to prison for 15 months, Andrews went to the Court of Criminal Appeal, where the verdict was upheld. Through his legal advisers he took the case to the House of Lords where five Law Lords sat to hear legal arguments, with Lord Atkin presiding. The point at issue was whether a motorist who is guilty of the statutory offence of dangerous driving where death has resulted, is therefore guilty of manslaughter.

It was a knotty legal point which the tribunal was called upon to untangle. Lord Atkin emphasised this when giving the ruling of the Court upon the points raised.

The principle to be observed, he said, was that cases of manslaughter in driving cars were but instances of a general rule applicable to all charges of homicide by negligence; lack of care such as would constitute civil liability was not enough.

He went on to say that a very high degree of negligence was required to be proved before the felony was established . . . and that it was difficult to visualise a case of death caused by reckless driving which would not justify a conviction for manslaughter. The law of manslaughter had not changed by the introduction of motor vehicles on the road. Death caused by their being negligently driven was to be treated in law as death caused by any other form of negligence, and juries should be directed accordingly.

Lord Atkin pointed out, however, that it was "perfectly possible that a man might drive at a speed or in a manner dangerous to the public and cause death, and yet not be guilty of manslaughter."

The legislature seemed to have recognised this by the provision in the Road Traffic Act of 1934 that, on an indictment for manslaughter a man *may* be convicted of dangerous driving.

In effect, the finding of the court laid it down that though *dangerous* driving *might* cause death without the motorist necessarily being guilty of manslaughter, a case of *negligent* driving with fatal results

has to be treated in law as death caused through any other form of negligence.

The appeal of Mr Andrews was therefore dismissed, and any obscurity on the points of law involved concerning manslaughter was made clear.

As I have shown, civil as well as criminal trials take place at the Assizes, and these are as varied in character and importance as are the criminal cases which come before the Justices of Assize.

For example, in 1947 Mr and Mrs Albert Tibble brought an action against Miss Doris Austin, a pianoforte teacher, living next door, asking that an injunction be granted to restrain the latter from giving lessons before 10 a.m. and after 6 p.m., and for more than three hours a day. The case was heard before Mr Justice Byrne at the Surrey Assizes, at Kingston-on-Thames.

For the plaintiffs it was alleged that Miss Austin gave lessons from as early as 8 a.m. to 9.45 p.m. The Tibbles explained that they had no objection to the use of the piano in moderation, but Mrs Tibble simply could not escape the continuous noise except by taking refuge in the kitchen.

Miss Austin revealed that she was a niece of Mrs Tibble, and that it was the latter who taught her to play the piano when she was a child. She had forty pupils, and, until the fuel cuts, had given lessons in a smaller room which was separated by two walls from the house next door.

With Solomonic wisdom the judge ordered that the lessons should in future be given in a room two walls distant from the Tibbles' house. He was satisfied that a nuisance had been proved, and gave damages of forty shillings, each side to pay its own costs. He added that the injunction would enable the girl to carry on earning her living.

History was made at Maidstone Assizes in 1948 when a 53 years old wife was awarded £400 damages against a woman hairdresser, aged 38, who was found to have enticed away her husband. This was the first time that a woman had had to pay enticement damages.

The action was brought by Mrs Gladys Ivy Baker of Queen's Road, Maidstone, Kent, against Miss Margaret Houbigant, of Gabriel's Hill, in the same town.

Mrs Baker was married in 1922 and had three children. She and her husband lived happily together until 1945 when Mr Baker went off to live with Miss Houbigant, who ran a hairdressing business. The wife petitioned for divorce, the *decree nisi* being made absolute in 1947.

In October of that year the husband returned to his wife; they were reconciled and remarried. The husband became ill two days after the wedding, and a few days later Miss Houbigant arrived with a basket of fruit and eggs for the invalid bridegroom. According to Mr Cecil Havers, counsel for Mrs Baker, she begged Mr Baker to return to her, saying she could not live without him.

Mr Baker recovered, and the family spent a happy Christmas together, but on December 27 the husband left his wife again, never to return. He was eventually found living with Miss Houbigant.

Mr Justice Cassels, referring to the hairdresser said: "She had the husband like a pet dog on the end of a lead; when he got away she whistled until he came back."

A unique claim was made by a wife before Mr Justice Croom-Johnson at the Leeds Assizes in 1950, when Mrs Julia Best, a woman of 24, brought an action against Samuel Fox and Co., Ltd., of Stocksbridge, with J. W. Thompson, formerly trading as Steel Constructors Ltd., Sheffield, as a third party.

The suit was for loss of *consortium* arising out of an accident to her husband at the steel works of the defendants. The husband, Rex Oldroyd Best, had suffered what the judge described as "a terrifying accident" and, as a result, had become sterile.

Counsel for each side referred to law books going as far back as the reign of George II. Counsel for Mrs Best quoted certain precedents, in connection with enticement cases in which damages had been given against a person for robbing a wife of her husband's company.

The judge, summing up the case, was sympathetic in his references to Mrs Best.

"One of the most beautiful signs of the relationship of husband and wife which is properly understood and properly appreciated by all sensible people is now denied completely to this unhappy woman."

He referred to arguments of counsel for the wife to the effect that she had a vested right in the *consortium* of her husband, and that if anybody, however innocently, interfered with that right, she was entitled to recover damages.

The husband had already been awarded £4,288 damages for the injuries he had received, and the judge searched the papers, both in that case and in the case before him, to find out whether or not the defendants knew that Mr Best was a married man.

Upon that small point depended whether or not the wife was entitled to the damages she claimed.

Mr Justice Croom-Johnson quoted judgments in enticement cases harking back for two centuries, and in each case the authorities had indicated that the person sued must be aware of the relationship of husband and wife, and must also have done some wilful act to deprive the person suing of consortium.

So far as that part of the subject went, said the judge, the action must fail. In the second part it had been put that there was a trespass on the right of the wife to that which she had lost. But here again, his lordship stated the rigid principle of the law. The relationship of marriage was not on a contractual basis, and once more the question of knowledge of the married state and deliberate intent applied.

Describing it as "a completely novel claim", Mr Justice Croom-Johnson gave judgment for the defendants with costs.

Divorce cases are also held at Assizes to-day, and there was a piquant touch about one that came before Mr Justice Morris at the Exeter Assizes early in 1951, when Mrs Elizabeth Mary Hottot, a woman of 36, was granted a *decree nisi* and the custody of the two children of the marriage on the grounds of the misconduct of her husband, Albert Louis Hottot, a 37 years old schoolmaster.

Mr Justice Morris, in delivering judgment, referred to a "Love Charter" which was said to have been contained in a letter from the husband to his wife while he was ill in hospital. It was one of the most extraordinary documents ever produced in a court of law, and among the extracts read by his Lordship were the following:

"I want you to be much freer in your relationship with other men than you have been since our marriage. I want you to go to parties and mix with people."

Then, after suggesting that his wife should be free to take a lover, he went on: "Of course I shall have the same rights. . . . Believe me this Love Charter is based not on generosity but self-interest."

The "Love Charter" went on to relate how he had committed adultery with a married woman a year after his marriage.

In reply to her husband's letter, the wife wrote that at first she did not care whether she ever saw him again, but added: "Suddenly, yesterday morning I knew it was not true and realised I loved you as much as ever I did, and I hope, with more understanding. . . ."

The judge remarked that the wife had shown a generous impulse in her response to the Charter, and in granting the petition of Mrs Hottot, accepted her denial of a suggestion of misconduct against her.

At Chester Assizes a very ancient custom going back to the earliest days of the Sheriff's Court was revived.

Mr Elwyn Jones was prosecuting in a case before Mr Justice

Goddard, the Lord Chief Justice, when it was discovered that no jurors were present.

"You must pray a tales, Mr Jones," directed Lord Goddard.

Counsel then repeated the age-old formula, "I pray a tales," whereupon a jury was empanelled from among the members of the public who were present in court.

The jury included three students from Chester Training College. It found not guilty of manslaughter an 80 years old motorist who had been involved in a collision with a motor-cyclist.

The Lord Chief Justice explained to the intrigued court that when there were not quite enough jurymen to try a case, and there was a prayer of tales (pronounced *tay-lees*), the Sheriff can be directed to empanel twelve jurors from those standing about. In fact the term arises from the Latin phrase *tales de circumstantibus*, meaning "from such persons as are standing about".

Charles Dickens referred to the custom when describing the trial of Pickwick at the Guildhall. He wrote:

> "*It was discovered that only ten special jurymen were present. Upon this, Mr Serjeant Buzfuz prayed a tales; the gentlemen in black then proceed to press into the special jury, two of the common jurymen.*"

I have dwelt at some length on Assize Courts because, dealing as they do with every type of trial both civil and criminal, they are the very backbone of our legal structure so far as the administration of the law is concerned.

Not that other courts are less important, for each one, in its fashion, fits into the general pattern of English justice.

CHAPTER SIX

THE OLD BAILEY

LOOKING out over London, heedless of the din and roar of its traffic and the crowds of people, stands the gilded bronze figure of Justice surmounting the copper dome of the Central Criminal Court, known throughout the world as the Old Bailey.

This famous criminal court was opened by King Edward VII in 1907, but for nearly a thousand years prisoners were tried on the very site it occupies to-day. On gallows put up within a few feet of the present main entrance to the Old Bailey, men and women were hanged in public less than a century ago, the ribald rejoicings of the crowds forming the accompaniment to the death cries of the victims.

The sixteen-feet high figure, with the carefully-balanced scales of Justice in one hand and the retributive sword of Justice in the other, is the only Statue of Justice in the world which is not blindfolded.

New as it is in structure the Old Bailey is ancient in tradition; and it is difficult to reconcile the picturesque dignity of the present building with the sinister squalor of Old Newgate Prison, with its sombre grey walls and forbidding doorway, which stood on the spot where now stands the greatest criminal court in the world.

Long centuries before Newgate Gaol was even built, when London was a walled-in city, and people could gain access only through one or other of its various gates, a prison had marked the junction of Newgate Street and the street of Old Bailey. It was the gate known as Newgate from which the prison took its name. These gateways were used as guardrooms and prisons, but not only were felons and malefactors confined there, they were also tried within the confines of the gate.

I do not propose to deal with the history of this court, as I have already done so at great length in my book, *The Old Bailey and its Trials*. I include this chapter because no story of English justice would be complete without mention of this, the Assize Court for London and Middlesex, and parts of Kent, Surrey and Essex.

Before the present building, there existed the old Justice (or Sessions) House, built in 1550. Prior to that, and after the prison had proved unsuitable for the holding of trials, buildings or "covered places" were hired in the vicinity and used as courtrooms.

But let me pass on to the cases which came before His Majesty's

judges in the Old Bailey, and I would like first to mention one which had some influence in bringing about the *Habeas Corpus Act* of 1679; probably one of the greatest enactments ever introduced. Under this Act, meaning "you may have the body", the keeping of a prisoner in gaol indefinitely without bringing him to trial was prevented. A writ could be obtained, and can still be obtained in such circumstances, ordering the gaoler to bring the prisoner for trial at a certain place on a certain day.

Had it not been for a lively propensity for drink and liking for a sing-song on the part of Alice Robinson in 1621, the Act referred to might have been delayed even longer than it was.

Already Alice and her husband had been run out of the village of Smithfield, London, by protesting neighbours, who objected to their bawdy roistering. They had taken refuge in a spot where High Holborn now stands.

One autumn night in 1621, the parish constable was passing the Robinson household when he heard a "brawling and fighting noise within the said house, whereby divers neighbours near adjoining were much disturbed in their rest." He entered the house where he "found divers suspicious persons, men and women in disordered and uncivil accompanying together."

When he taxed Alice with her merrymaking, she gave vent to such a shocking outburst of profanity that the constable "took her into custody" as we should say to-day. Actually he took her to the Clerkenwell House of Correction, where she was already well-known, having been there previously for picking pockets and keeping a bad house.

The next morning a Justice of the Peace "set his hand" to a warrant which ordered her to be kept in the House of Correction until she was brought to trial. Meanwhile, the Governor was to mete out such "correction" as he deemed fit, in order to bring her to a right frame of mind.

In due course she was brought to trial at the Old Bailey, and it was there she related as terrible a story as has ever been heard in any court of justice. She was given the minimum diet of black bread, cheese and water she told the court, and had to sleep on the cold earth, not having enough money to pay the sixpence demanded for a straw mattress. Then, while engaged on hard labour, she was taken away to the Whipping House and there given 50 lashes upon her naked body, in spite of the fact that she had told the Governor she "was with child".

"I swooned—my flesh being torn by the whips," Alice stated,

adding, "He (the Governor) then ordered me to be carried back to my labour and to receive no relief from any person, nor have any lodging but the bare earth for the space of the six days and nights then ensuing."

In those days punishment was often barbaric, and the public were not usually dismayed at any sort of treatment meted out to criminals whether man, woman or child. But somehow this story of the brutal whipping of a pregnant woman must have aroused some spark of pity in the hearts of Sir Francis Jones, one time Lord Mayor of London, Heneage Finch, the Recorder of the City, Sir Thomas Fowler and several other commissioners who listened to her story; for, in spite of her undoubted guilt in upsetting the quietude of the village of St Giles in the Fields, where she now lived, and making the night hideous with raucous song, these good gentlemen acquitted her.

But the matter did not end at that. The enterprising constable was summoned before them, and was committed to Newgate for having made the arrest without a warrant. The Justice of the Peace was also reprimanded for having signed the warrant for the House of Correction. Even then the repercussions of the trial of Alice Robinson were not over. In January 1622 it was laid down by the Lord Mayor and his Justices that no committal to the House of Correction, nor any directions as to what punishment should be inflicted therein, should be made unless four Justices of the Peace were in agreement on the point and gave their written authority.

Another 57 years were to elapse, however, before the *Habeas Corpus Act* was to come into force; but undoubtedly Alice made some part of its history.

Less than three hundred years ago, in 1670, a jury was locked up for two nights in a room of the old Sessions House "without meat, drink, fire or candle."

It was the jury of twelve good men and true who were present at the trial of William Penn, Quaker and founder of the State of Pennsylvania, and William Mead. Penn and Mead were charged with "unlawfully and tumultuously" assembling and addressing people "whereby a great concourse and tumult was made, and continued to the terror and disturbance of His Majesty's subjects." In other words, a charge of conspiracy.

The trial was in fact a travesty of justice, but the jury were good men and true in every sense of the term. While they found that Penn was guilty of "speaking or preaching", they declared that Mead was not guilty of the said indictment.

The Lord Mayor and the Recorder of the Court would not accept

this verdict. The jury were ordered to be kept without food, fire or light till the next morning, but it made no difference. When they entered the court again they returned precisely the same verdict. The Recorder raved and stormed.

"I *will* have a positive verdict or you shall starve for it!" he cried, and then, turning to Penn, he bellowed: "You are indicted for conspiracy, and one being found Not Guilty and not the other, it cannot be a verdict."

But William Penn rose to the occasion. Quietly yet none the less forcefully he replied: "The consent of the jury *is* a verdict; and if William Mead be not guilty, I am acquitted of course. I could not conspire alone."

The jury were sent back to spend yet another night without food, fire or light, and when, on the morrow, they refused to return any other verdict but the one they had given, they were each fined forty marks and committed to prison till their fines were paid.

On a wall of the present Old Bailey is a marble tablet, bearing the following words, immortalising that jury who established the right of juries to give their verdict in accordance with their convictions. The tablet says:

> Near this site
> William Penn and William Mead
> were tried in 1670 for preaching to an unlawful assembly in Grace Church Street. This tablet commemorates the courage and endurance of the jury Thos Vere, Edward Bushell and ten others who refused to give a verdict against them, although locked up without food for two nights, and were fined for their final verdict of Not Guilty.

Coming to more recent times, trials for murder have often darkened the pages of the history of the Old Bailey. None more so than the trial of a man named Greenacre, who was brought to justice three months after the slaying of Hannah Brown in 1836.

Just after Christmas of that year, a bricklayer found a package of cloth or sacking hidden behind a paving stone on the road to Kilburn. The contents proved to be the trunk of a woman, wrapped in a piece of a child's blue-printed frock. Ten days later a head was picked up in the Regent's Canal, where it flows through Stepney. It had been severed from the body, and a post-mortem examination showed that a bruise over one eye had been inflicted just before death. It was established that the head belonged to the trunk found at Kilburn.

Two months went by. Not a vestige of a clue as to the identity of the dead woman had come to light. Then, a labourer, cutting the hedge overhanging a ditch in Coldharbour Lane, Camberwell, came across a bundle containing a pair of human legs. They, too, were part of the body of the victim whose remains had been found as far apart as north-west, east, and south-east London, at points miles distant from each other.

Yet another three weeks went by before a gentleman named Gay came forward to view the remains. He was worried because he had not heard from his sister Hannah Brown, a widow, who was about to be married to a Mr Greenacre living in Carpenter's Buildings, Camberwell. When confronted with the head, he had no difficulty in recognising the features of his sister, and at once the police began their investigations.

Greenacre was arrested on the eve of his departure for America. When his boxes were opened, a portion of the blue-print frock in which the trunk had been wrapped was discovered among other incriminating articles. Going abroad with Greenacre was a woman named Gale. She, too, was arrested, and together they were brought to trial at the Old Bailey.

The accused man admitted the dismemberment, but stated that the cause of death was accidental. Hannah Brown had deceived him regarding the amount of property she possessed and they had quarrelled. He had thrown a rolling pin at her and was horrified when he discovered that she was dead. He decided to dismember her and to conceal the remains.

He was found guilty and sentenced to death. Gale was found guilty as an accessory, and was sentenced to transportation for life.

After the sentence of death, Greenacre asked to see the under-sheriff and begged that gentleman to tell him what had been the weak parts of his defence. He was told that it was the features of the dead woman which had led to her identification.

"God forgive me for my carelessness," he cried. "I ought to have mutilated the features."

To the majority of people the name of W. T. Stead will recall his life's work in the cause of Spiritualism, and his tragic death in the *Titanic* which went down in 1912 after striking an iceberg on her maiden voyage. Few will think of him as a "gaol-bird"—although I would hasten to explain that there was no disgrace about his imprisonment. "W.T.", as he was more often referred to, went to prison deliberately, gladly, on a matter of principle. To his fearlessness and public spirit may be attributed the passage of the Criminal

Law Amendment Act of 1886, which raised the "age of consent" from thirteen to sixteen, and made heavier the penalties on those who battened on the prostitution of young girls. It was a Bill to prevent the white slavery which was a social scandal and disgrace.

Until that time, it was the easiest thing imaginable to procure some child of thirteen and put her into a brothel, so long as the girl herself consented.

This evil was brought to the notice of Stead, then editor and owner of the *Pall Mall Gazette*, a popular London evening paper. He went to Scotland Yard, obtained the full strength of the legal position, and then set out to buy a girl of thirteen to prove how easy it would be for any vicious man to obtain possession of a young and innocent girl. He went to a Mr Booth, later to become General Booth of the Salvation Army, who was carrying on a mission in the East End of London among the poverty-stricken inhabitants of that district. He was introduced to a Mrs Jarrett, a prostitute who had been "saved" by the Booths. This lady approached the wife of a chimney sweep in North London and persuaded her to part with her daughter Eliza in return for a payment of £3.

It is here that Stead put himself outside the law. Mrs Jarrett pretended that the girl was wanted for domestic service, and she omitted to obtain the father's consent, although Stead believed that it had been obtained.

What followed can only be described as error of judgment and good taste on the part of the reformer. He drugged the child, then took her to the house of a woman whose character would not bear investigation; Eliza was then put to bed. The next day the girl was taken to a nursing home. After she had been examined there by a doctor who certified that no harm had come to her, Stead took her to the Booth headquarters and left her. She was shortly afterwards taken to the Paris headquarters of Mr and Mrs Booth.

Having, as he thought, made out his case, Stead wrote a series of "revelations" in his *Pall Mall Gazette* under the somewhat startling title "*The Maiden Tribute to Modern Babylon*".

He recounted the story of Eliza but changed her name to Lily. He also exercised more than a little literary licence by making it appear that she had in fact been bought by a *roué* for an improper purpose, and he failed to indicate that he had himself engineered the transfer of Eliza from her parents' custody.

The articles created a tremendous stir, and at times there were disturbances outside the premises of the *Pall Mall Gazette*. The paper was banned from the bookstalls because of the nature of the

revelations, and questions were asked in the House of Commons.

The climax came when Stead announced that it was he who had abducted the girl Eliza, and he who had sent her to Paris in the kindly care of the Booth organisation, where she was being well looked after. At once he was prosecuted on a charge of abduction, and it was on this charge in company with the late Bramwell Booth, Mrs Jarrett and three other people who had taken part in tending the girl, that he appeared in the dock at the Old Bailey.

Mrs Jarrett proved a very unworthy "convert" when giving evidence. It became obvious that she had not only lied to Eliza's mother, but had also gravely misled Stead as to the character of the mother and father. They were quite respectable people, and the jury had no difficulty in coming to the conclusion that on no account would either mother or father have sold their daughter into prostitution.

Stead made a characteristically eloquent appeal in justification of his action, but the facts were indisputable. On his own admission he had been guilty of abduction, and this was the verdict of the jury. In passing sentence of two months' imprisonment upon the prisoners, the learned judge gave him "credit for good motives from your point of view." Bramwell Booth was acquitted.

One other murder trial I must mention because of its sequel.

Most of the visitors to the Festival of Britain, on the south bank of the River Thames, in 1951, will have seen the refurbished red lion which stands guard over the spot where the Lion Brewery stood, before the building, but not its majestic guardian, was destroyed by German bombs during the Second World War. This same red lion was the witness of a murder which, while not sensational, proved to be the beginning of a trial that was indeed stranger than any fiction.

One starlit evening in February, 1872, an employee of the brewery, George Merritt, was on his way to night work. He had just reached the shadow of the gates which led into the brewery when three shots fired in rapid succession brought him dying to the ground.

A policeman ran to the scene. He found a mild-looking little man grasping a revolver, and gazing helplessly down at George Merritt. He was arrested, and proved to be a Dr William Minor. He was an American surgeon who had come to London, after suffering a nervous breakdown, in the hope that it might help in his recovery. He had become obsessed with the idea that he was being persecuted; and on this particular night, he was walking back to the humble lodgings he occupied in nearby Tenison Street, when he saw Merritt,

felt a surge of suspicion run through his tormented mind, and shot him.

At the Old Bailey he was found guilty but insane, and was sent to Broadmoor Criminal Lunatic Asylum, as it was known at that time.

Dr Minor was not only a wealthy man but also one of extreme culture as was shown by the books which he ordered to augment those he found in the extensive library in Broadmoor, where he had his own private rooms, and pursued his literary studies. One day in one of the books he had bought, he found a leaflet issued by Sir James Murray, whose name will always be associated with the Oxford Dictionary. It invited students to submit any items they might have concerning the origin and derivation of English words.

Although this leaflet came only by chance into the hands of the murderer who was destined to spend nearly forty years of his life in Broadmoor, it gave him an outlet for the genius that burned side by side with the madness which is so nearly akin. Dr Minor had specialised in the subject before his breakdown, and now applied himself to sending all the information he could obtain from reading and other studies. From 1873 until 1911, when relatives were successful in gaining his release from Broadmoor, the doctor supplied no fewer than 6,000 quotations illustrating how English words had acquired a different meaning in the States.

He always wrote from the address "Crowthorne, Berkshire", the village near which this famous mental home is situated. Sir James wrote frequently to the doctor thanking him for his contributions, and was intrigued when one day he received an invitation to visit his unknown contributor at Crowthorne.

A car was sent to meet him at the station, and one can picture the surprise of the editor of this famous dictionary when he found that the man who had sent him some of the most valuable contributions to this work was a murderer.

They became great friends, however, and Sir James paid several other visits. Long after Dr Minor had gone back to the States, in fact up to the death of Sir James in 1915, this erudite man contributed items for inclusion in new editions of the dictionary.

He outlived Sir James by six years, dying in America in 1921 at the age of 86.

Ordinary cases of libel are heard either in the King's Bench Division, or before the judge trying civil cases at Assizes. Cases of criminal libel, however, are heard before the judges presiding over the criminal trials.

One of the most startling cases of criminal libel ever heard at the Old Bailey was that in which the late Noel Pemberton Billing, M.P., inventor and journalist, stood indicted before Mr Justice Darling (afterwards Lord Darling) with "having maliciously published a defamatory libel concerning Maud Allan."

Maud Allan was the world-famous dancer who had created a tremendous sensation by her dance *The Vision of Salome* at the Palace Theatre, London, some years before. The dance had aroused the greatest controversy in Press and Pulpit because of its daring nature, and the scantiness of the clothing worn by Miss Allan in her interpretation of this biblical story.

In 1918 Miss Allan returned to this country from the United States, and Mr J. T. Grein engaged her to appear in a version of Oscar Wilde's *Salome* for two private performances at a West End Theatre.

Meanwhile, Pemberton Billing had started a small newspaper, which was privately circulated to members of an organisation known as *Vigilantes*, who subscribed ten shillings a year for the privilege. The newspaper, for want of a better name, bore the title *Vigilante*, and it was in the issue of February 16, 1918, that the alleged libel appeared.

It consisted of a cross-heading, followed by a reference to Maud Allan, and it was the juxtaposition of the two of which complaint was made. It read:

> The Cult of the Clitoris
>
> To be a member of Maud Allan's private performances in Oscar Wilde's "Salome" one has to apply to a Miss Valetta of 9 Duke Street, Adelphi, W.C. If Scotland Yard were to seize the list of those members I have no doubt they would secure the names of several thousand of the first 47,000.

In the first place the association of Miss Allan with that headline could only suggest one thing, as Mr Hume Williams, counsel for the dancer, pointed out in his opening speech. He emphasised to the jury what that cult was and told them "it means the deliberate perversion of all the natural instincts that nature has implanted in man and woman, to the practice of a filthy, enervating and degrading vice."

He then went on to deal with the cryptic reference to Scotland Yard and the 47,000. He referred to a previous issue of the paper in which, after suggesting that men and women in high places had been corrupted and blackmailed into parting with secrets to Germany on

pain of exposure of the vices in which they indulged, the writer went on to say:

> "There exists in the *Cabinet noire* of a certain German Prince, a book compiled by the Secret Service from the reports of German agents who have infested this country for the past twenty years, agents so vile and spreading debauchery of such a lasciviousness as only German minds could conceive and only German bodies execute. . . . In the beginning of the book is a precis of general instructions regarding the propagation of evils which all decent men thought had perished in Sodom and Lesbia. . . . More than a thousand pages are filled with the names mentioned by German agents in their reports. There are the names of forty-seven thousand English men and women. . . . It is a most catholic miscellany. The names of Privy Councillors, youths of the chorus, wives of Cabinet Ministers, dancing girls, even Cabinet Ministers themselves; while diplomats, poets, bankers, editors, newspaper proprietors and members of His Majesty's household follow each other with no order of precedence. . . ."

After mentioning some of the vices in detail the article went on:

> "Impure as were all these things, the great danger was seen in the reports of those agents who had obtained *entré* to the world of high politics. Wives of men in supreme position were entangled. In Lesbian ecstasy the most sacred State secrets were betrayed. The sexual peculiarities of members of the peerage were used as a lever to open fruitful fields for espionage."

When the publication of the first mentioned article was brought to the notice of Miss Allan, she at once took legal advice and brought the action for criminal libel.

It was a nasty, unwholesome and unsavoury case. The court was thronged with women in Society, who sat unperturbed while Mr Hume Williams went into a detailed physiological explanation of the word clitoris and its association with Lesbianism.

Pemberton Billing did not have counsel, but conducted his own defence. And, for a layman who knew little of the rules of evidence, in which many a lawyer gets entangled from time to time, he conducted the case remarkably well. He had that legal wizard, Mr Justice Darling, to control any excursions into matters not in strict

accordance with the law, and this gave rise to many brusque exchanges between Pemberton Billing and the judge.

After six full days the hearing was completed. Mr Justice Darling summed-up and the jury retired. An hour and twenty minutes elapsed before they returned. Pemberton Billing, who had conducted his case from the solicitors' table in front of the dock, had returned to the dock to learn his fate.

"Not Guilty," replied the Foreman in response to the customary question from the Clerk of the Court, and at once there broke out a burst of cheering both in the public gallery and the body of the court; cheering which did not die down until, on the order of the judge, the court was cleared.

I have always felt that the acquittal of Pemberton Billing was as much due to the clear enunciation of the law by Mr Justice Darling in his summing-up, as to any of the arguments adduced by the accused in support of his plea of justification.

The learned judge stressed the point that the prisoner would *still* be guilty of criminal libel even though he proved that the words complained of were "true in substance and in fact", unless . . . he could show that their publication was in the public interest; which is obviously the view that the jury took.

My sympathies were with Maud Allan, for although Pemberton Billing admitted that there was nothing he could urge against her private life, *this* point was never put to the jury as it should have been. If it had, I think a different verdict might have resulted.

No more interesting subject ever stood in the spacious dock in the famous No. 1 Court there, than Dr Klaus Emil Julius Fuchs, the German-born scientist and self-confessed traitor and Communist who left that dock to serve a 14 years sentence in Stafford Gaol, for betraying atom secrets to the Russians.

As I looked upon him I tried to pierce the emotions lurking behind those steely eyes that gazed on the court through horn-rimmed spectacles.

I saw there a rather pallid, neat-looking young man with a forehead that bulged, a man with a weak, receding chin and a frail body. Thirty-eight years of age, he became a naturalised Briton during the war, and had worked at the atomic research station at Harwell.

A fugitive from the Germans, he had sought refuge in this country. How came he to betray so vilely those who had befriended him? Let him speak for himself: "I used my Marxian philosophy to establish in my mind two separate compartments, one in which I allowed myself to have friendships and personal relationships." He

refers to his development of "controlled schizophrenia", or split mind.

All this was in a statement which he made voluntarily before his arrest. Without that statement, the police admitted, there was no evidence upon which they could have prosecuted.

What had brought about this sudden conversion? Again we may refer to the statement as it was read out by Sir Hartley Shawcross, the Attorney-General, at the trial of Fuchs.

"Since coming to Harwell I have met English people of all kinds and I have come to see in many of them a deep-rooted firmness which enables them to live a decent life."

We cannot delve into the depths of the mind of this man, of whom the Lord Chief Justice, Lord Goddard, said in passing sentence: "You have done incalculable harm both to this land and to the United States, and you did it as your statement shows, merely for the purpose of furthering your political creed."

Before sentence, Fuchs said in a low voice: "I have had a fair trial. I thank you, my Lord, I thank my counsel and the governor and staff of Brixton Prison for their considerate treatment."

Perhaps Fuchs was sincere in his conversion. At any rate we know that in a special cell in Stafford Gaol he was allowed to carry on with his studies in atomic research. Already valuable information has been passed to the authorities as the result of his work in prison. But nothing he may do can ever undo the harm he wrought in passing on vital secrets to the Soviet.

CHAPTER SEVEN

THE CORONER'S COURT

THE Office of Coroner is as ancient as that of the Sheriff. It would be true to say that the Coroner grew up side by side with the Sheriff and the itinerant justices of whom I have already written.

The Coroner is known chiefly as a rather unfortunate person who does little but preside over inquests on dead bodies. Although this melancholy task forms by far the largest part of his duties to-day, he has other duties, as we shall see. For the time being, however, we must go back many centuries when his judicial functions were far more numerous, and when he ranked as one of the most important officers in the land.

How important may be gathered from John Britton, famous lawyer in the reign of Edward I, who, writing in the name of the King in 1291–1292, stated that "by the statute of Westminster the First, 1275", a Coroner's duties "were required to be discharged by one of the most lawful and discreet knights of the County."

By then, however, Coroners were already well established, and it can be taken for granted that this Royal office originated long before that time. Some authorities date its origin to the Anglo-Saxon period. Doubtless there did exist officials who performed much the same functions as Coroners considerably earlier than the year 1194, when we find the first trace of the title in the Latin phrase, *custos placitorum coronae*—the guardian of the pleas of the Crown.

The late Professor Gross, of Harvard University, a very sound scholar, was of the opinion that the Charter bestowed upon the City of London by Henry I, 1100–1135, refers to a Coroner, for the Charter also includes the word *coronae*. Certainly the Office was firmly established by the reign of Henry II, 1154–1189, for Coroners' Rolls of that period are in the Public Record Office in London.

His duties are aptly summarised by Sir John Jervis in *The Office and Duties of Coroners*, first published in 1829. Says Sir John: "His special duty was to keep pleas, suits, or causes which more particularly affected the King's Crown and dignity and were determined either by the King in person or by his immediate officers. As one of the King's officers, his function was not so much to hear and determine causes as to keep a record of all that went on in the county

in any way connected with the administration of criminal justice, and above all to guard what may be called chance revenues falling to the King.

"The collection of such revenues depended to a great extent on the diligence of the coroner in seeking for such things as the forfeited chattels of felons, deodands, wrecks, royal fish and treasure trove. . . . It was the duty of the coroner so to speak, to prepare the way for any work with the justices, and both offices alike, existed primarily for the King's profit. Indeed judging by the Coroner's Rolls, less concern is often manifested to bring the felon to justice than to secure his chattels for the King."

Henry de Bracton (or Bratton), 1245–1268, whose *Treatise on the Laws and Customs of England* is one of the most authoritative works on the subject, states that another duty of the Coroner was to hold inquests in cases of rape and arson.

The latter is of interest because to this day, in the City of London only, the Coroner has power to hold inquests upon any case of loss or injury by fire. This is the result of the City of London Fire Inquests Act, a private Act passed in 1880. Previous to 1860 inquests on fires were held in other places including Manchester, Lincoln, and Doncaster, and it is reported that during the five years between 1845–1850 Mr Serjeant Payne (Coroner for the City of London) held no fewer than 71 inquests of this character.

I would draw your attention to the manner in which Coroners, just like the Sheriff and the Justices in Eyre, were mainly occupied with getting all the money they could into the King's coffers. The tax-collector of to-day is, in comparison, a mere novice in the art of extracting the proverbial blood from a stone. Bratton, after mentioning the "Lawful and discreet knights" from which Coroners were drawn, also emphasises that "The primary objects of his office appear to have been to keep watch over the profits of the Crown. He was bound to inquire concerning treasure trove, wreck, whales and sturgeons, and to secure them for the King's use. The inquest in cases of sudden death had a similar purpose to see that the Crown was not deprived of its emoluments arising from forfeiture of the chattels of felons and outlaws. The coroner alone bore record of outlawries in the County Court; his presence was required whenever judgment of death was passed in a Court of private jurisdiction (a Manorial Court); appeals (accusations) of felony were commenced before him; and his inquest extended to cases of rape, which was from ancient time a matter of royal jurisdiction, and consequently of profit to the Crown; and, in cases of wounding which might

possibly lead to death, and upon which, if the wound was serious, an appeal of felony might be founded.''

As I pointed out in the chapter on the Sheriff's Court, one of the main duties of the Coroner was to keep check on how the Sheriff performed his duties with regard to the King's exchequer, and to ensure that no revenues were diverted from their proper destination.

But Coroner's themselves were not apparently above suspicion, for in Magna Carta a provision was made ''That no sheriff, constable, coroners, or other of our bailiffs, shall hold pleas of the Crown'', that is to say that they should not act as criminal judges, and impose the fines and amercements they had hitherto been in the habit of imposing—very often to their own financial advantage.

How, it might be asked, could an untoward death add to the riches of a King? Why should the chattels of a felon be regarded as his inalienable perquisite, and what were the outlawries that possessed such financial interest for him?

You will notice that Jervis uses the word deodand as being among other means of enlarging the King's exchequer. Mr Bolland gives several illuminating examples of the manner in which deodand operated, in his *The General Eyre*.

''To-day we read of coroner's inquests finding verdicts of accidental death. The old phrase was death by misadventure. When a man met his death by misadventure or by accident, as we say to-day, something was connected with the accident which, in some vague sort of way, might be considered the cause of it. A man stands on the wheel of a cart to gather berries from a tall bush. He falls and breaks his neck. The wheel was held in some sort of way the cause of the man's death, and as such was forfeit to God—deodand.''

Deodand became forfeit to the King because, in the words of Sir Edward Coke, the King was ''God's lieutenant on earth''. Deodand derives from the Latin *deo dandum*, meaning ''thing to be given to God.''

It was the coroner's job to decide what was, and what was not, deodand. The rule by which he decided was, as Mr Bolland points out, laid down in these terms: ''Everything that moves, along with that particular thing which is the agent of a man's death is deodand to the King.'' The writer continues: ''In the case which I have just supposed, of a man falling from the wheel of his cart, the cart itself must be taken as remaining quite stationary. If it had appeared at the inquest that the horse had moved the cart at the time, then the whole cart and its contents and the horse or horses drawing it would have been forfeited, the whole loss falling upon the owner, who was

not in the smallest degree to blame for what had happened."

This idea of attaching responsibility to inanimate as well as living objects was no new thing. It went back to the laws of Ine and Alfred, when any article which caused the untimely death of a person became forfeit. In those days, however, the forfeit was handed over to the kindred of the deceased. In Bracton's time the forfeit was handed over to God, as represented on earth by the King.

Mr Carter in his *History of English Legal Institutions* says that in the thirteenth century "the thing was taken over by the sheriff or the coroner or other officer and sold, and at the next eyre an order was made for him to account for its value."

He also mentions that the justices could direct for what specific purposes the money should be applied, and gives an example of a case that occurred in 1221 when some people fell out of a boat on the River Severn and were drowned. The record, taken from the *Select Pleas of County of Gloucester*, says: "Value of boat eighteen pence *dentur deo ad pontem*". In other words to build a bridge.

Blackstone emphasises the position in connection with homicide, and states: "It matters not whether the owner were concerned in his killing or not, for if a man kills another with any sword, the sword is forfeited as an accursed thing. And therefore in all indictments for homicide, the instrument of death and the value are presented and found by the grand jury (as that the stroke given by a certain penknife value sixpence) that the King or his grantee may claim the deodand."

Deodands were not abolished until 1846, nearly ten years after Victoria came to the throne, on the ground that they were "unreasonable and inconvenient".

In a Statute of Edward I, known as *De Officio Coronatoris*, 1276, now repealed, the powers and duties of a coroner were clearly defined. In the event of any person being "slain, or suddenly dead or wounded" the coroner had to hasten to the spot and look round for anything pointing to foul play. "And, if any appear guilty of the murder he should enquire what goods, corn and lands he hath."

If, at the subsequent trial of the suspect, he was found guilty, then the "goods, corn and lands" he possessed were forfeited to the King. Any other felony carried with it a like penalty.

Consequently the more crime that could be proved, the more money went into the exchequer of the King. The forfeiture of a felon's chattels was not abolished till 1870, when the Forfeiture Act became law. You will remember that both Sheriff and Coroner would be amerced, and their lands and chattels forfeited if they failed

to ensure that these forfeits found their way into the pockets of their Royal master.

By this same Statute of Edward I, too, the Coroner was called upon to investigate all deaths that took place in prisons. This was to reassure the public that the prisoner had died as a result of natural causes, and not through any harsh treatment by the gaol officials. This clause remains in force to-day, and in every case where anyone dies in gaol, the Coroner is summoned to hold an inquest.

In sixteen months, during 1322 and 1323, eleven felons died in the prison of the Castle of Northampton. Eleven inquests were held, and it is recorded that in each case the cause of death was either from hunger, thirst, or privation and cold.

I have referred to ancient Coroners' Rolls which, you will bear in mind, recorded not only deaths but also accusations (termed appeals) of felony.

Probably the oldest record in existence is mentioned by Jervis in connection with Pleas before Justices and King during the reign of John, in the year 1200. This is how it reads as translated from the Latin:

"Marten Martel appeals (accuses) Peter, John's son, for that he wickedly and in the King's peace broke the outer and inner doors of his house and chamber on his land at Canwick, outside the City of Lincoln, and robbed him of 67 marks, and in robbery carried off the title deeds of his lands. Peter comes and defends all of it here and where it shall behove him to defend as a free citizen of our Lord the King."

Yet another record, this time on the body of a boy who lived in the Hundred of Barford (Bedfordshire), puts it in this manner: "It happened at Barford on the morrow July 26th, 1265 of St James the Apostle in the 49th year of King Henry, son of King John, that Henry, son of John of Bretville of Barford, who was ten years of age went at vespers into his father's yard to play, and fell into a ditch and was accidentally drowned. His father promptly searched for him and lifted him out of the water and sought to save him; he did not succeed in doing this; the son died immediately (after being taken out of the water). The said John found pledges: John of Blunham of Barford, and Robert of Bolnhurst of the same place. Inquest was made before G. Rowland, the Coroner, by four neighbouring townships, Barford, Roxton, Renhold, Wilden; they say that, as far as they know, it was an accident, as is aforesaid."

In those days it was always necessary for the person who found a body to provide pledges (or sureties) that he would appear before

the itinerant Justices if the felony or death took place outside a dwelling house. One wonders what may have been the finding in the case of the drowned boy. Was the ditch adjudged responsible for the boy's death? If so, was the judgment the same as that spoken of by Blackstone who says, "Thus, too, by an ancient law, a well in which a person was drowned was ordered to be filled up under the inspection of the Coroner"?

There was another important duty which the Coroner had to perform in connection with a dead body. And that, for the moment, takes us back again to the days of Canute who brought his Danes over with him. The latter were not popular with the people of England, and, from time to time, they would be found dead. When Canute was leaving this country on a pilgrimage to Rome, in order to protect his subjects from violent death at the hands of the conquered people he instituted the law of *Englishry*. This provided that when any person was killed and the murderer got away, the victim should always be regarded as a Dane unless it could be proved by his friends and relations that he was in fact an Englishman. If this could not be proved, then a very heavy fine was imposed upon those living in the neighbourhood where the body had been found.

When the Conqueror arrived he adopted this same law in connection with his French subjects in England. If a body was found and nobody could prove it was that of an Englishman, then the local Hundred either had to run the murderer to earth or pay a fine of 47 marks.

It was the Coroner's duty to record all cases of *Englishry* within his district and duly present the details before the Justices of Eyre on their visit.

Suicide was a felony, and the goods and chattels of a person taking his own life were also seized by the Coroner on behalf of the King, up to the Act of 1870 which I have already mentioned.

Then there was the matter of outlawry, a very common penalty in medieval days, when folk were less apt to accept the law of the time, and would not submit to the justice of the Court. In that event they were made outlaws, that is, put outside the law and deprived of the King's protection, such as it was. But even so there was some attempt to do justice, for, before this stern measure was taken, the name of the offender was called five times in Court. If he, or she, did not answer, the writ of *exegi facias*, as it was called, came into operation, and judgment of outlawry, or, in the case of a woman, *waiver*, was then pronounced. Outlawry in civil cases was abolished under the Procedure Appeal Act of 1879, but it still obtains in criminal cases

under the Forfeiture Act of 1870, although rarely if ever used.

In addition to inquests and the other duties which I have mentioned, the Coroner had administrative work such as the execution of the King's writs, and one or two other functions to perform.

Blackstone tells us that "The Lord Chief Justice of the King's Bench is the principal Coroner in the kingdom, and may (if he pleases) exercise the jurisdiction of a Coroner in any part of the realm."

All Justices of the High Court are likewise empowered to carry out the duties of Coroner in any part of the country, but I have never heard of any judge holding an inquest.

So far I have said nothing about Coroner's Courts, which are the subject of this chapter. The fact is, that except in the administrative County of London, there is no duty imposed upon any other County or Borough to provide a court for their Coroners. Some of them do, of course, but many people would perhaps be surprised to see some of the buildings in which inquests are held.

I have attended some hundreds of inquests, in private houses, school rooms, council offices, and on more than one occasion in a loft over a stable, or outbuilding in a garden. Always it has been in premises near to where the body is lying.

At the inquest on James White, the famous theatre impressario and racehorse owner, the inquest was held in the drawing-room of his beautiful country mansion. I remember it well, because of a wet day, and we members of the Press had been kept out of this "Court" until the arrival of the Coroner, with the result that we were soaked through.

In the drawing-room the rain streamed down from our mackintoshes and overcoats on to the priceless carpets and furniture.

Because an inquest is a judicial act, it must not take place on a Sunday, but a Coroner's jury may be summoned on that day.

Although essentially a court of law the Coroner's Court cannot, as R. M. Jackson in his *The Machinery of Justice* points out, be fitted into any classification of courts.

"Law courts are primarily concerned with *issues*," he states, "that is the decision of points as between contesting parties. The Coroner's Court is a fact-finding body, incapable of trying any issue civil or criminal."

Although the Coroner may hold his court in unpretentious places, his powers are by no means unpretentious when it comes to the matter of the evidence given in those courts, and his precedence over all other judicial officers.

For instance, if a person should be summoned to appear at the

Coroner's Court on a certain day, and should also receive a summons to attend any other court—even including that of the Lord Chief Justice himself—on that same day, then it is to the Coroner's Court that he must go.

Although judges and magistrates are strictly bound by certain defined rules of evidence and methods of procedure in their courts, the Coroner may or may not permit cross-examination of witnesses. He may refuse to allow counsel or solicitor to appear before him, and there is no superior tribunal to rebuke him. There is no appeal from the verdict of a Coroner or his jury. Such verdict can be quashed only by the High Court if it is proved that there has been serious irregularity or misconduct in the way in which the inquest has been carried out.

These powers have often led to widespread disquiet, and I shall have something more to say about this when we deal with the type of inquiry which takes place in a Coroner's Court.

The fact remains that even to-day the Coroner is largely a law unto himself where the question of evidence is concerned. He, and his jury, are still entitled to ask questions of a witness which, if they were asked of that same witness at a murder trial, would be immediately disallowed as likely to interfere with the course of justice and to prejudice the jury for or against the accused.

The Coroner must have certain qualifications to hold his Office. In earlier days they were mainly of a property nature. For instance, until the Coroners Amendment Act, 1926, Coroners were supposed to have "land in fee in the county", or what was termed a "coroner's freehold". This was frequently bought by the would-be Coroner on the very eve of the poll, when, before the year 1888, they were elected to the office by freeholders. Often their "freehold" consisted of nothing more than a grave in which members of their family were buried. The Coroner is no longer elected but is appointed by the County Council.

To-day a Coroner must be either a barrister, a solicitor or a medical practitioner of not less than five years standing. A Coroner's jury, too, must have certain qualifications in that they must not be aliens, convicts or outlaws who cannot be deemed "good and lawful" citizens. They must also be able to write their names legibly. Under the Coroner's Amendment Act 1926, the number of jurors required to attend an inquest is not less than seven and not more than eleven. But in certain cases the Coroner can sit without a jury.

Let me now deal with some of the examples of a Coroner's work. They are, of course, almost invariably tragic, but an exception comes

to my mind. It is a case which ended in the King's Bench division, Aitken *v.* London and North Western Railway in the year 1901. It was a claim for damages for negligence in the carriage of a Peruvian mummy which was broken in transit from South America to Belgium.

In April 1899, the package containing the shrivelled body of the mummy was sent from Liverpool, addressed to Maison de Melle, Belgium. At Broad Street Station, London, some suspicion was aroused concerning the contents of the package, which was opened. Inside was found the mummified body of a woman. In the process of unwrapping the parcel the mummy was damaged.

The "body" was handed over to the Coroner, who held an inquest at which the following verdict was found:

"That the woman was found dead at the railway goods station on April 15, and did die on some date unknown in some foreign country, probably South America, from some cause unknown. No proofs of a violent death are found. The body has been dried and buried in some foreign manner, probably sun-dried and cave-buried, and the jurors are satisfied that this body does not show any recent crime in this country, and that the deceased was unknown and about twenty-five years of age."

In those days it was the rule that jurors had to "view" the body, but under the Act of 1926, this is no longer compulsory, although the jury may do so if they wish.

And to show that the somewhat involved phraseology used in our courts of law is by no means of recent origin, I will quote the instance of an inquest held upon one William Toomes in 1655.

William was staying at the home of "Paul Pinder, gent", in Bishopsgate, London, when, "not having God before his eyes, but being moved and seduced by the instigation of the devil, then and there, to wit on the 4th day of June in the said year of our Lord, 1655, took into his hand a certain piece of bed-cord, value one penny, and did then and there fasten one end of the said bed-cord to a pillar of the window of the said bed-chamber, and the other end around the neck of him, the said William Toomes. . . ."

William, then, "feloniously, wilfully, and as a felon himself", stood on the window-ledge and flung himself out; with the result that the "said William Toomes . . . did hang, choak and strangle himself" and instantly died.

But the present is no less interesting than the past. Here is a comparatively recent case, which shows that a Coroner has sometimes to make unusual decisions. It was at the hearing of the inquest on

the body of James Keenen, which was held before Mr W. Bentley Purchase at St Pancras Coroner's Court a few years ago.

Keenen was stabbed in the eye in Glasgow in the year 1944. A man named Fox was sentenced to six months imprisonment for the assault. Two years later Keenen died, and at the inquest the Coroner stated: "If the period between the incident and the man's death had been less than a year and a day, there would have been proceedings against Fox for murder."

In recording a verdict of death by misadventure, Mr Bentley Purchase explained that because of the longer period which had elapsed, it was presumed in law that death could not have been due to the criminal act which caused the injury.

A curious but little-known point was revealed at an inquest in Oldham, Lancashire. A Mrs Ivy Banks gave premature birth to a baby boy at an Oldham hospital. She had announced her intention of naming the child Peter, but he died. Nothing more would have been heard of the baby but for the finding of its dead body on a Corporation rubbish dump five days after it was born.

There was an inquest, and Mr J. L. Watson, the Oldham Coroner, was intent, among other things, on finding out how the body could have come there. An obstetric surgeon stated that the child had never lived. He had not seen any signs of life or breathing.

A Sister at the hospital told the court that she had been instructed to wrap the baby in a blanket and place it in a bucket.

But there was one person who gave evidence that she heard the cry of the child, and knew it could not live long. This was Nurse Joan Cottier. She related how she had heard the mother say that she intended her baby to be christened Peter. Knowing this, said the witness, and knowing also that as a Christian she had power in the emergency to dedicate the dying child herself, she carried out a simple ceremony of baptism, naming the baby Peter, and then placed him in an oxygen tent.

Peter died twenty four hours later.

In recording their verdict the jury stated that the baby found on the dump had lived for twenty-four hours. It had died because of premature birth, and that its name was Peter.

A clergyman said afterwards that anyone who has been baptised, even a child, can baptise in an emergency.

From early times, the Coroner has always been called upon to hold inquests as to how, when and where the deceased has been the victim of violence or accident. It was the Coroner's duty to apprehend the guilty, attach all who knew anything of the circum-

stances, and keep them till the itinerant Justices came along. He holds those same powers to-day. By his verdict, or that of his jurors, he can commit for trial any person who may have been found guilty, by his inquisition, of murder or manslaughter, and that person can be tried without any further accusation being made against him.

How often we read of a verdict being given in a Coroner's Court that a victim has been murdered by "some person or persons unknown." I am not so much concerned with such a verdict, which leaves it for the police to continue their inquiries and perhaps bring the guilty persons to trial. I am more concerned with cases, now rare, in which verdicts have been recorded against someone who has been named by a Coroner's jury, as having slain the person on whom the inquest was being held.

I have known people committed for trial on the strength of such a verdict. When they appeared before the Assize Court Judge, it was found that there was no case at all. One such example comes to my mind. It roused a storm of public protest against the way in which the inquest had been conducted.

It was the case of Mrs Beatrice Pace in 1928.

For months she endured the torture of the inquest and police court proceedings, till her final appearance at Gloucester Assize Court charged on the Coroner's inquisition with the murder of her husband. The learned Judge ordered the jury to return a verdict of Not Guilty without even calling upon the defence.

I knew Mrs Pace well. I was with her daily during the inquest proceedings until that moment, at the conclusion of the evidence, when the Coroner in so many words instructed the jury to find a verdict of murder against this woman. I was present in court on that occasion, and remember how the jury first returned with the verdict that "The deceased died from arsenical poisoning administered by some person or persons other than himself, and that the case called for further investigations."

That, in my view, was all that was necessary. The police could have continued their inquiries, and, if they had obtained sufficient evidence, could have brought a charge against Mrs Pace. But the Coroner sent the jurors back to their room with the instruction that they must "name" somebody.

I can still hear the anguished cry of Beatrice Pace, when, after a further deliberation of twenty-five minutes, that Coroner's jury came back, the foreman declaring: "We have revised our verdict as follows: We find that Harry Pace met his death by arsenical poisoning administered by Beatrice Annie Pace."

"No, I didn't!" cried Mrs Pace. A moment later she was arrested on the inquisition of the Coroner.

There was a sustained outcry by the Press, and even that staid paper, *The Law Journal*, remarked that the Coroner's jury had returned "as we suggest with no jurisdiction whatever, a verdict of murder against Mrs Pace."

Leading articles were written in protest, and a public subscription was raised to provide her with adequate defence at her trial. Mr Norman Birkett, K.C. (later Lord Justice Birkett), was engaged to defend her. After her triumphant acquittal Mr R. Hopkin Morris, M.P., introduced into the House of Commons a Bill to limit the duty of a Coroner to the discovery of the cause of death, and to debar him from naming guilty persons in a verdict. Although the first reading of this Bill was unanimously agreed to, it has never become law.

A year later, in 1929, there was another public outcry over the way Philip Yale Drew, the actor, had, as it was said at the time, been pilloried in the Reading Coroner's Court in connection with the murder of Alfred Oliver, a Reading tobaconnist. Once more Press and public raised their voices to call attention to the dangers which might beset an innocent individual, who, because of certain circumstances, might have suspicion directed against him, and be proclaimed guilty by a Coroner's jury.

Leading K.C.'s and other members of the Bar united in condemning the practice of some Coroners who persisted, as though they were prosecuting counsel, in cross-examining witnesses, and without any regard to the well-settled rules of evidence.

"The whole system of inquisitions by Coroners," wrote one K.C. "is now an anachronism that arose when it was a question of whether there were any goods forfeit to the Crown. This reason no longer exists. Moreover, when the system originated there was no police force in the modern sense. Now that we have a police force which investigates suspected crimes there seems to be no reason why the investigation should be duplicated in the case of manslaughter or murder."

Mr Arthur Emmanuel, the Southampton Coroner, was equally vigorous in his views. He declared: "I hold that as soon as it can be seen from the evidence that a criminal charge may be made against someone the proceedings should be stopped. . . . I do not think a Coroner's Court should start a prosecution which should be carried out by another authority. You do not want two trials. An adverse verdict against any person must affect his ultimate trial and should always be avoided."

Fortunately, in the case of Philip Yale Drew, in spite of his counsel Mr Fearnley-Whittingstall being refused permission by the Coroner to address the jury, the latter returned a verdict of "murder against some person or persons unknown", so that he was not put in peril of his life.

It must be mentioned that since that time, and undoubtedly largely due to the expressions of public feeling in the matter, Coroners have not insisted on the naming of individuals in their verdicts, and it is now the general rule, since the Coroner's Amendment Act, 1926, for a Coroner to adjourn an inquest if a person has already been charged with murder or manslaughter before the magistrates. After all criminal proceedings are over, he may then discharge the jury who were originally called.

Now let me turn to a lighter side of a Coroner's duties. He is no longer called upon to hold inquests on Royal fish or wrecks. Those duties were abolished by the Coroner's Act of 1887. But he still has to hold an inquest on treasure trove, and, only a few months before I wrote this, an example of this archaic law came before the district Coroner of the Norfolk village of Snettisham.

A tractor driver named Raymond Williams was ploughing a field belonging to the squire of the village, Sir Stephen Green of Ken Hall, when he turned up a quantity of old Celtic coins and trinkets. Archaeologists made a thorough search of the field, as they thought, coming to the conclusion that the coins and trinkets had been left there by some Celts who had invaded Norfolk in the 4th century B.C. They declared that the field was then "clear".

In the meantime, an inquest was held upon this treasure-trove, and Williams was awarded £400 for his part in recovering the valuable haul.

In November, 1950, Tom Rout, another tractor driver working for Sir Stephen, was ploughing the same field when he, too, turned up a priceless gold and silver necklet. Once again an inquest was held, and Rout was awarded £120.

Commenting on the discoveries in his field, Sir Stephen Green remarked that his men called it "the gold field". "And," he added, "believe me, the competition to plough those acres is really keen. The trouble is that I have to give the finder a day off to attend the Coroner's treasure trove inquest."

How was it that Tom Rout and Raymond Williams were treated so generously? In Anglo-Saxon times all such treasure trove was held to belong to the King. And even in mediaeval times it was regarded as a source of revenue, as Adam Smith writes in his *Wealth of*

Nations. "Treasure trove," he states, "was in these times considered as no contemptible part of the revenue of the great Sovereigns of Europe."

To-day treasure trove belongs to the State except in certain circumstances defined by Chitty in 1820.

"Treasure trove is where any gold or silver in coin, plate or bullion is found concealed in a house, or in the earth, or in a private place the owner thereof being unknown, in which case the treasure belongs to the King or his grantee . . . but if he that laid it down be known or afterwards discovered, the owner and not the King is entitled to it. . . . If the owner, instead of hiding the treasure, casually lost it or purposely parted with it in such a manner that it is evident he intended to abandon the property altogether and did not purpose to resume it on another occasion, as if he threw it on the ground or other public place, or in the sea, the first finder is entitled to the property against everyone but the owner, and the prerogative of the King does not in this respect obtain."

Thus it is the *hiding* and not the abandonment that makes treasure trove the property of the King. But any person finding such treasure must report it either to the police or the Coroner on pain of fine or imprisonment.

Under a Home Office Circular of June 30, 1925, the Treasury will treat the finder liberally. It was under this same order that Rout and Williams received their windfall.

One more point I would mention before bringing this chapter to a close.

On February 9, 1951, Miss Mary Hollowell of Needham Market, near Ipswich, became the first woman Coroner in England. The appointment as Coroner for North Suffolk was made by the East Suffolk General Purposes Committee. For five years she had been deputy Coroner, and prior to that had been the first woman magistrates' clerk.

CHAPTER EIGHT

THE KING'S BENCH COURT

I WANT now to return for a brief moment to Westminster Hall, of which Ben Jonson wrote:

> "*The Great Hall of Westminster, the field*
> *Where mutual frauds are fought and no side yield.*"

It was in this building, you will remember, that courts of justice became centralised very early on in our story. It was there that the *Curia Regis* or King's Court first had its being as a permanent court. But long before Westminster Hall was built, and long before William I landed in England, there was the *Aula Regia* (Royal Court), even though it might be only a canopy of leaves or the shelter of some tented field set amid the sparsely-populated areas of England. Where the English King was, there, too, was the Court in which he administered his laws and did such justice as obtained at that time.

I particularly want to emphasise this point because, as Edward Augustus Freeman states in his *History of the Norman Conquest*: "Even the novelty of the Norman reigns were things which grew up on English soil. They grew up indeed under Norman influence, but they were not brought over as something new from a foreign land."

This is especially true of the *Curia Regis*, the equivalent of which had existed in England before the Conqueror; although, under Norman rule, it became legislature and executive all in one, it also brought home to the general public, more forcibly than ever before, the idea of the King as the fountain of justice.

Gradually the *Curia Regis* acquired a judicial association, although it still continued to exercise its functions in connection with government policy and war. Its great purpose so far as we are concerned was that its Judges administered the Common Law which had developed from the customs and usages of the past, so that there was not only a central court, but there was centralised law as well. This court dealt with both criminal and civil matters, until such time as the increase in business became so great that the Judges could not deal with it, and there came about a most significant change in the order of things.

Up till this time the *Curia Regis* had been presided over by the Chief Justiciar. This worthy represented the King in his absence. He was second man in the land, and not even the Lord Chancellor or the Lord Chief Justice of to-day have so great a judicial power as had the Justiciar of olden days. Although the history of this office is not without glory while it lasted, it was of short duration. When Stephen de Segrave disgraced himself in 1234, and was removed from the Justiciarship, the office died with him.

In the same way that Coroners and Sheriffs exceeded their judicial powers to their own advantage, so did the Justiciar grow "to become a tyrant to the people and a menace to the Crown itself." It is related how, in the reign of King Stephen, 1135–1154, Hugh Pusar, Bishop of Durham and nephew of Stephen, bought the Justiciarship of England from Richard Coeur de Lion for a lump sum down. He used his power to such evil purpose and in such un-Christianlike manner, that Richard sent William Longchamp, armed with his Royal Commission, to conquer and depose the acquisitive bishop.

While on the subject of Justiciars, let me digress for a moment to mention a quaint custom that has been handed down through the centuries, and is still carried out to this day.

It originated with Ranulf de Glanville, the greatest Justiciar of them all perhaps, who was a gallant soldier as well as able judge. It was he who defeated William the Lion, King of Scotland, beneath the walls of Alnwick, Northumberland, not far from Newcastle-on-Tyne, in 1174, arousing the ire of the Scots. For long years afterwards the Scottish Border was regarded as being dangerous to the Justices of Assize who visited Newcastle. So, for hundreds of years, every Judge presiding at this Assize has been presented by the Sheriff with a Jacobus (a little golden coin) as a sort of charm to ward off any possible molestation by the Lions of Scotland.

But to return to the *Curia Regis*. There came a time when it began to split up its manifold duties. Hitherto it had discarded the functions of Government which to-day are carried out by three distinct bodies; the Crown in Parliament, which looks after all legislative business, the Crown in Council, which is a purely executive body, and the Crown in Law Courts dealing with all the judicial business of the land.

Small wonder that the *Curia Regis* found the task beyond it. It began to throw off its judicial duties first by instituting the Exchequer presided over by a Treasurer. It was not at first a Court, but rather an office set up to deal especially with the King's revenues. It will be recalled, however, that revenue collecting and the collection

of fines were closely associated with the local judicial officers of the Hundred and County Courts, and very soon we find the Exchequer taking common pleas and acting as a court of law, and with the same great men as presided over the *Curia Regis* sitting also in the Exchequer.

According to Carter in *A History of Legal Institutions*, the Exchequer came into being during the reign of Henry I, 1068–1135, and he mentions the action of the men of Periton *v.* the Abbot Faritius in 1109 being tried in the Exchequer "before three bishops and many barons". It was a case in which the men claimed the return of a manor which had found its way into the hands of the Abbot.

Another Court which came out of the *Curia Regis* was the Court of Common Pleas. This was a Court for the trial of disputes between subject and subject, as compared with those termed pleas of the Crown which were heard in the King's Court, by this time known as the King's Bench.

Hanbury tells us: "We shall see that Common Pleas began its career as a separate court under Henry II." Later on, under a clause of Magna Carta, it was ordained that the Court of Common Pleas was not to follow the King on his visits to his Eyres and Assizes, but that it was to be "held in a certain place", that place being Westminster Hall.

In this it differed from the King's Bench, which, as well as sitting at Westminster, also provided the itinerant Justices, who were first sent forth under Henry I, to visit the counties and apply the King's law. The name King's Bench probably derived from the fact that when it was the King's Court, both the King and the Justices used to sit on benches. At one time there was in Westminster Hall, on the south-east side, a marble bench 19 feet long and 3 feet wide, on which the judges used to sit, and upon which the King sat for his Coronation feast. This was known as the King's Bench. The Court itself was known in ancient times as *Curia Domini Regis*.

Nor must we forget the importance of the Judges at this period. We get a glimpse of this in the second year of the reign of King John, 1201, when the Abbot of Leicester was being sued before the justices of the Bench at Westminster, and pleaded a charter of exemption from suit, except before the King or his Chief Justiciar. But, in spite of the reverend gentleman's efforts, it was held that the pleas before the justices of the Bench were before the King.

And that is precisely the position of Judges to-day. They represent the King. Indeed, they *are* the King when engaged on their judicial duties; and it is to the King, through His Majesty's Justices, that the

Sheriffs of the counties pay such picturesque and colourful homage when they attend the County Assizes.

The Courts which I have mentioned, King's Bench, Common Pleas, Exchequer, were all housed in Westminster Hall at the time of which I am writing. And there they sat century after century from the time of Magna Carta right up to the day that the new Royal Courts of Justice, at Temple Bar in the Strand, were opened in 1882.

By that time, however, the entire judicial system of England had undergone a complete change. It had been remodelled following the report of a Judicature Commission which sat in 1860. In 1873, Parliament passed the Judicature Act which came into operation in 1875. By that Act the three Courts mentioned above, together with several other courts that sat in Westminster Hall and elsewhere, were united and merged together as one Supreme Court of Judicature in England, more popularly known as the High Court of Justice.

The High Court was divided into five Divisions. The Chancery Division, Queen's Bench (now King's Bench) Division, Common Pleas Division, Exchequer Division and the Probate, Divorce and Admiralty Division. Then, by an Order in Council of 1880, the offices of Chief Justice of the Common Pleas, and Chief Baron of the Exchequer were abolished, and those two Divisions were merged in the Queen's (or King's) Bench Division, and ceased to function as separate courts.

To-day there are a number of King's Bench Courts housed in the Law Courts, but actions are always referred to as taking place in the King's Bench Division. For greater convenience, however, I shall use the term King's Bench Court throughout this chapter.

Until 1882, then, the Courts of King's Bench, Common Pleas, and Exchequer functioned in Westminster Hall. King's Bench tried pleas of the Crown, and such few criminal cases as were not sent to the Assizes (including the Old Bailey); Common Pleas applied the law as between subject and subject, and the Exchequer, whose Judges were called Barons but had no connection with the peerage, dealt with those cases connected with revenue.

At least those are the specific duties for which the courts were created, but in fact all three continually tried to encroach on the jurisdiction of each other, and a keen, often a bitter, rivalry continued for centuries.

Hanbury refers to this rivalry when he states: "There was never any nice allocation of jurisdiction between them. Rather do we find that the officials of each were continually astute to make inroads, overt and covert, on the territories of the others, impelled by the

remorseless logic of a system of judicial piecework. The more cases a court tried the more fees accrued to its officials, and so, none of the three courts could rest content with the jurisdiction that fell legitimately to its share. . . .''

This mercenary aspect of justice appears as a blemish through many phases of our earlier judicial development. Edward I discovered, on his return from Aquitaine in 1289, that several of his new Judges, including the Lord Chief Justice, had taken bribes. Edward threw them all into prison where they remained while the charges were being investigated. All except two were found Guilty, and were not only dismissed with ignominy, but were heavily fined into the bargain. Thereafter all future Judges were called upon to take oath that ''they would take no bribe nor money, nor gift of any kind from such person as had suits depending before them—except a breakfast, which they might accept provided there was no excess.''

Before this, in the reign of Henry III, 1216–1264, Ralph de Hingham (or Hengham), a Chief Justice of his time, was fined for erasing or tampering with the Court Roll. The fine was applied to constructing a bell-tower containing a clock. This clock as it struck the hours was intended to remind the ermined Judges in Westminster Hall of the fate of their ''brother''. The bell of the clock was known as Old Tom, and, when the new St Paul's Cathedral was opened, it was removed there in 1698.

The King's Bench Court has a wide jurisdiction, and the cases which come before its Judges are varied indeed. They range from slander and libel to breach of promise; from a claim for damages in respect of an injury sustained in an accident or for compensation under the Workmen's Compensation Act, to an application for an injunction to ''restrain'' a prima donna singing at a certain concert; from a claim for damages in connection with the enticement of a wife, to a breach of contract in carrying out the building of a house or factory.

All these, and many other civil actions, may come before the King's Bench Court held at the Law Courts to-day. And it is only in recent years, by section 11 of the Administration of Justice (Miscellaneous Provision) Act of 1938, that the jurisdiction of the King's Bench in criminal matters has been somewhat curtailed. Before that, criminal cases could be tried before King's Bench Judges sitting at the Law Courts in the Strand, as well as at the Old Bailey and the County Assizes.

Let us look briefly into the activities of the King's Bench Court

throughout the centuries since its inception, and see how it fits into the pattern of English legal institutions.

As long ago as the reign of Richard I, 1189–1199, we read in the King's Bench Rolls of the claim of Agnes de Bascoville to the Castle of Bredewardine, which she alleged was her "right and inheritance", and of which, she complained, she had been deprived by Robert de Wastre. The Justices ordered the Sheriff of Hereford to take the castle into his hands what time their Lordships considered their judgment. But the Sheriff pointed out that, as the castle was out of his bailiwick, he must not take any such action. The Roll then continues: "William de Braosa says that neither king, justice, nor sheriff ought to lay their hands on his franchise. The case is adjourned *sine die* till the pleasure of our lord the king is known hereon."

I cannot tell you who William de Braosa was, unless he be the Sheriff of the particular county in which the castle was situated, nor can I tell you whether Agnes succeeded in her claim.

An unusual slander case came before the King's Bench Court in the year 1638, when a "private Clergyman" by the name of Thomas Harrison stood charged with "contempt in insulting and slandering Mr Justice Hutton one of the Judges of the Common Pleas as he sat upon the Bench in Westminster Hall." The indictment in the language of that time read that "being moved by Malice, and intending to bring the said Mr Justice Hutton under His Majesty's high Displeasure to the Hazard of his Life and Estate, and intending to disturb the Peace of the Kingdom and the Courts of Justice then setting, did Audaciously and Maliciously rush to the Bar of the said Court of Common Pleas, and with a loud voice said, 'I do accuse Mr Justice Hutton of High Treason'."

Apparently the reverend gentleman had taken exception to an opinion expressed by Mr Justice Hutton in the Court of Exchequer to the effect that "The King has no lawful Power to levy Ship-Money." He claimed that this view was "contrary to the Opinion of all the Orthodox Divines in the Kingdom."

Ship-Money was an ancient imposition charged on the ports, towns and cities of England, for providing ships for the king's service. It had lain dormant for many years, but was revived by Charles I. It met with strong opposition.

Mr Harrison did not deny the charge and was fined £5,000 and ordered to parade all the Courts in Westminster Hall with a paper attached to his forehead "expressing his Offence and making his Submission in every Court."

A more picturesque if less worthy gentleman figures in our next

King's Bench trial. He was none other than the almost legendary Jack Sheppard, whose chief claim to notoriety was his almost uncanny ability to break out of Newgate Gaol, which he did on several occasions.

Jack's father was an honest carpenter to whom both his sons, Tom and Jack, were apprenticed. Perhaps it was what they learnt about the use of tools at the parental hands that proved useful to them in their subsequent criminal careers, for they became expert burglars.

Jack used to frequent the Black Lion hostelry in Drury Lane where he became very popular with the women who used the premises. One in particular, Elizabeth Lyon, but better known as "Edgworth Bess", was his special paramour, and helped him in many of his exploits. It was she who introduced him to the gang of Jonathan Wild, that Moriarty of the sixteenth century who ran with the criminal hares and hunted with the police hounds.

Eventually Jack and Bess were captured and imprisoned in Newgate Gaol. The social amenities for prisoners in those days were much greater than they are to-day; Jack and Bess were allowed to live within the prison precincts as man and wife. Visitors were also allowed more freely than at present, and it was one of Jack's friends who smuggled in certain implements with which he managed to file through his own fetters and the bars of the cell window. He then tied the bed sheets together and, after lowering Bess to the ground outside, quickly followed, and together they got away.

Jack Sheppard was soon associated with "Blueskin", another notorious member of the Wild gang, in stealing bales of cloth from one Kneebone. They were caught in the act, and Jack was sentenced to death. This time it was two weeping women who came to visit him, and contrived to engineer his escape. Once more Jack indulged his liking for finery by breaking into a pawnbrokers and stealing a quantity of fine apparel and some valuable jewellery which he donned and blatantly paraded in his usual haunts.

Only a fortnight elapsed before he was caught again, and to make quite sure there should be no more escapes the authorities put him in the "Castle" at Newgate, an extra strong cell at the *top* of the prison. To make doubly sure, he was handcuffed and loaded with irons, and then chained to a staple in the floor.

On October 14 of the year 1724, the Sessions of the Old Bailey were sitting in the Court right next door to the gaol. Taking advantage of the gaolers being engaged in conducting prisoners to and fro for trial, Jack, with the aid of a nail, unlocked the padlock of the chain which held him fast to the floor. He then removed his handcuffs and,

with the leg-irons tucked up the legs of his breeches, forced six doors which had not been opened for seven years, clambered over roof-tops, and once more gained his freedom.

Passing by St Sepulchre's Church he bade a breezy "Good morrow" to the watchman there, and went on the run, still fettered. He tore his jacket and cap to make him look like a beggar, and went to Charing Cross where, in a tavern, he heard people talking excitedly about his escape from gaol.

The next day he dined with two women at an inn, and then with characteristic audacity drove in a carriage with blinds drawn through Newgate archway to pick up his mother. Full of strong drink and courage he took her on a tour of the gin shops and made her ingloriously drunk. When finally he was captured he too was senseless with drink.

This time the authorities made sure of their man. He was brought hurriedly to trial before the King's Bench Court and sentenced to death. But even then he made a bold bid to escape on his way to Tyburn. Somehow he got possession of a penknife with which he intended to cut the bonds around his hands. Then, he was to jump from the cart into the crowd, and run through Little Turnstile where the mounted officers could not follow him. Alas, for Jack, the knife was found and, as the report of that time has it, "he died with great difficulty and much pitied by the mob."

Exactly a century later another trial took place before the Justices of the King's Bench. It was a case which made legal history. In 1824 there was an action in which a man named Thayer was sued for debt. Mr Thayer appeared at the Bar of the Court in company with eleven "oath-helpers", prepared to swear away his debt—"to make his law", as it was called—as had been done centuries before. I have already described this procedure in Chapter 1. This litigant had remembered that the law, though out of date and never used, was still in existence, and he took advantage of it with such success that he won his case.

It was not until 1833 that this procedure was abolished by Statute.

Breach of promise actions have always aroused a great deal of public interest. In earlier days "breach" actions, and in fact all questions concerning matrimony, were dealt with by the Ecclesiastical Courts, about which I shall have something to say later on. In those days, once proof of the promise of marriage had been established, the sentence of the Court in the reign of Edward VI, 1547–1553, was short if not always sweet. It ran:

"Sentence of matrimony, commanding solemnization, co-habita-

tion, consummation and tractation such as it beseemeth man and wife to have.''

There was no question of damages in those days. Failure to carry out the order of the court meant excommunication. This ''specific performance'' as lawyers might term it, was abolished in 1754, but long before then King's Bench Judges had been hearing civil actions in connection with breaches of promise, and had been awarding damages.

This form of action has continued to the present day in spite of various attempts either to stop such cases altogether, or else vary the procedure. By a later Statute the plaintiff, usually a woman, has now to produce evidence other than her own sworn testimony that the promise was made; and by a change in the procedure both the plaintiff and the defendant are competent witnesses. This was not the case when Mrs Bardell sued Mr Pickwick.

There, it will be remembered, neither the plaintiff nor the defendant gave evidence, and at the time of the trial, 1831, neither plaintiff nor defendant, or prisoner on a criminal charge for that matter, were competent in law to give evidence. The reason for this was that it was felt that one could not expect the truth from any party connected with a case, and that they might be tempted to commit perjury in order to win their action or prove their innocence.

It was not until 1843 that this bar to the evidence of an interested party was lifted, and then in civil cases only; and it was not till eight years later, in 1851, that the Evidence Act enabled the principals to an action to give evidence on their own behalf. This was also only in civil cases, for it was not until 1883 that a person on a criminal charge was allowed to speak on his own behalf.

It came about in this manner. In that year there was an outbreak of anarchy, which led to the passing of the Explosive Substances Act which included a clause allowing anyone accused under its terms the right to speak on his own behalf. In 1898 all restrictions were removed, and any prisoner was entitled to go into the witness box, and, on oath, tell his own story. Wives were also made eligible to give evidence against their husbands if they so desired, but could not be compelled to do so.

But to return to the subject of breach of promise, with two contrasting cases.

In 1897 a breach of promise action was brought by Katherine Fitzpatrick, better known by her professional name of Katie Howard. She was an artists' model of outstanding beauty whom such famous

artists as Lord Leighton and Sir L. Alma-Tadema had been proud to paint. The toast of Bohemian London, she had been wooed and courted by men in high places and of fabulous wealth.

Her choice fell upon Jesse Curling, himself a strikingly handsome young man, who was a sleeping partner in a big West End tailoring firm. They met and, after a short courtship, became engaged. Then, with dramatic suddenness, the engagement was broken off, and Katie Howard brought an action for breach against her wealthy lover.

For the model, there appeared in the King's Bench Court the late Lord Carson (then Sir Edward Carson, Q.C., for the trial was in Victoria's time). I can well imagine the resonant voice of this great advocate as he drew a picture of his client's rise from obscurity to fame as a leading London beauty, and then went on to impress the jury as he denounced the suggestions made against her as "foul and nauseous". A fine vocabulary had Carson, with the power to use it to the best advantage.

"Suggestions as cruel as they are baseless," he went on. "It will be represented to you that in pursuit of her profession as an artist's model she has forgotten her dignity as a woman, her duty of loyalty to the man who had chosen her as his wife. But they will be refuted by evidence which will convince you that Katherine Fitzpatrick is a grossly wronged woman to whom signal reparation is due."

Katie went into the witness box and told her story. Jesse Curling did likewise. Counsel made their closing speeches, and the Lord Chief Justice, who was presiding, summed up. The jury returned a verdict for the plaintiff and awarded her £150 damages.

Not a very large sum for a broken heart, perhaps, and that is the reason I have quoted this case; for it was only sixteen years later, in 1913, that the highest amount ever known in connection with a breach of promise case was received by Daisy Markham, the actress, against the Marquis of Northampton, then aged 28 and a Lieutenant in the Royal Horse Guards.

The romance began when Miss Markham was playing the part of Suzanne Polignac in *The Glad Eye* at the Apollo Theatre, London. The Marquis, then Earl of Compton, sitting in a private box, was attracted. An introduction followed and they soon became engaged.

But, as Mr H. G. Duke, K.C., M.P., who with Mr F. E. Smith, K.C., M.P., appeared for the plaintiff, told the court, the young marquis "gave a solemn promise to his dying father against the dictates of his heart, to withdraw the promise of marriage", and so the engagement was broken.

The subsequent action for breach of promise was one of the most sensational of all time, particularly when it was announced that a settlement had been arrived at by which the defendant agreed to pay £50,000 damages as solace to the actress. Again Sir Edward Carson, K.C., appeared in a "breach" suit, this time for the young marquis, and few who heard him will ever forget the pathos of that moment when he read to the hushed court the last letter written to Miss Markham by his client. It began, "My dearest Daisy," and went on, "You will always be my beautiful dream."

Since that time, and until quite recently, unusually large amounts by way of damages have been rare. In 1949 a sum of £10,500 was awarded to Liana Marina Kremizi, a beautiful Greek girl, and in 1951 Mrs Dunhill was awarded £20,000. On appeal by the defendant a new trial was ordered on the question of damages. At the time of writing this trial is still pending.

There have been quite a number of breach of promise actions brought by men against women, but such actions are rare.

Strange sights sometimes break the monotony of the King's Bench Court. There was, for instance, the stuffed head of a horse which was solemnly paraded round the court of Mr Justice Pritchard by Mr Alfred Parry Jones, with a court usher acting as its body, while Mr Jones demonstrated the proper method of leading a horse.

This performance arose out of an action brought by Mrs Magda Buchel, who claimed damages alleging that she was kicked and injured by a filly named Nassau, at Ascot races in 1949. She was suing Mr Henry ("Atte") Persse, the trainer, and the Earl of Sefton, owner of the horse and a steward of the Jockey Club. Mrs Buchel alleged negligence, and it was to discover whether there had been negligence or not that this court of the King's Bench was sitting.

It was stated that Mrs Buchel was kicked on the head and suffered fractures of the skull when Nassau left the unsaddling enclosure after running in the Queen Mary Stakes.

Several witnesses were called as to the right or wrong way to hold the rein or tape when leading a horse. Mr Frank Carr, an ex-cavalryman, said that the *only* way to hold a horse was the way the Cavalry held them. Mrs Ida Buckmaster, who said her daughter was Master of the Warwickshire Hunt, stated that "the proper" way was the right one, but—she did not demonstrate. She was at Ascot on that day, and, in her view, the stable boy holding Nassau at the time of the accident was doing so in the right way.

Captain Cecil Boyd-Rochfort, the King's trainer, was more descriptive, and said that the lead-in tape should be held with the

right hand near the bridle, with the left hand down. He added: "It is impossible to stop a horse kicking or plunging if it wants to."

But it was the joint effort of Mr Parry Jones and the usher with the stuffed head of a horse that normally does duty displaying harness outside a West End shop, which finally clinched the argument.

Proudly the model approached the jury box so that the jurors could appreciate just where the lead-in tape should be attached to the bridle. Then it turned and made its way to the witness box where Mr Parry Jones demonstrated how the right hand should hold the tape (or rein) about nine inches down from the horse's mouth, with the left hand holding the slack tape lower down.

The sequel was a consultation between counsel and their clients; and then Mr Fox Andrews, K.C. (for Mrs Buchel), rose to his feet.

"We"—counsel always identify themselves with their clients in this manner—he said, "submit to judgment for the defendants without costs against the plaintiff."

This is an interesting sidelight on another phase of the law. In ordinary circumstances the party on the losing side of an action has to pay the costs of both sides—unless the Judge thinks fit to order each to pay its own, but in this case, it was evident that Mr Fox Andrews realised he must fail in his action, and in consultation with counsel for the other side, had come to this very equitable arrangement. A fine piece of legal strategy, as it turned out, for Mr Justice Pritchard intimated that if the case had gone on, and the defendants had submitted that there was no case to go to a jury, he would have upheld that submission; which would undoubtedly have meant costs against Mrs Buchel.

We have already seen how criminals were tried in the King's Bench Court, when I referred to that of Jack Sheppard in 1724. But long after the courts of justice were transferred from Westminster Hall to Temple Bar, criminal trials were held there from time to time, though only on very rare occasions, be it said.

None was more sensational, perhaps, than that of Whittaker Wright, that Midas of the City who dabbled in millions and at length descended to fraud in an attempt to prevent his financial empire crumbling into dust. The story of his frauds in connection with the Globe Finance Coroporation has been told too often to need repetition, but when at length the crash came in 1902 it was through the astuteness of his counsel, Mr Lawson Walton, K.C., that the trial was fixed to take place before Mr Justice Bigham in a King's Bench Court instead of at the Old Bailey. Counsel hoped that coming

before Mr Justice Bigham, so versed in big commercial cases, his client might stand a better chance.

But Whittaker Wright was found guilty and sentenced to seven years' penal servitude.

Within a few minutes newsboys were crying aloud the news, "Whittaker Wright gets Seven Years!" Placards announced "Wright Found Guilty". And then, almost before the echo of their voices had died away, they were racing through the streets again with a new cry, "Suicide of Whittaker Wright!" "Wright Takes Poison!"

Whittaker Wright, unable to face imprisonment after his life in fantastic luxury, asked to go to the lavatory while he waited for the vehicle which was to take him to Pentonville Prison. He returned to chat with his friends, and asked for a cigar. He struck a match, put it to the cigar and collapsed on the floor, where he died a few minutes later. He had managed to secrete about him a small phial of cyanide of potassium, and it was to swallow this that he had asked to leave the room.

A year later, in 1903, Colonel Arthur Lynch appeared in the King's Bench Division before Lord Alverstone (the Lord Chief Justice of that time), Mr Justice Channell and Mr Justice Wills. He stood charged with High Treason under a Statute of 1351, and faced a formidable array of counsel. Sir Richard Finlay (afterwards Mr Justice Finlay) Attorney-General, assisted by Sir Edward Carson, Solicitor-General, led for the Crown. He told the story of how Lynch had taken an oath of allegiance to the South African Republic, had thus become a naturalised Boer and was appointed Commander of the Irish Brigade.

There was also evidence that during an engagement at Sunday River Bridge, during the South African War, Lynch had himself opened fire upon British troops and had directed the firing of the men under him.

The defence, in the hands of that astute and resourceful counsel Horace Avory, was that if Lynch was a naturalised Boer he no longer owed allegiance to England and was therefore outside the Statute of Treasons—the very same argument that was adduced 42 years later at the trial of William Joyce at the Old Bailey, when he, too, stood charged with High Treason.

As with Joyce, Lynch was found guilty and sentenced to death in one of the most momentous scenes ever witnessed in any court of law. But there was a happier climax in his case. His fine character and the noble motives which, however misguided, had inspired him,

were taken into account, and the death sentence was commuted to one of penal servitude for life. Even then the quality of mercy in British justice had not exhausted itself, and after serving one year of his term, Lynch was released. Later on he received a Free Pardon from the King, and subsequently became a Member of Parliament for County Clare. He sat for ten years in the English House of Commons, and in the First World War fought courageously on the side of the Allies. He died in 1934.

Not so happy was the fate of Sir Roger Casement who, in 1916, and under the same 1351 Act, stood in the same court as Lynch had done, charged also with High Treason.

Once more the Lord Chief Justice (Lord Reading this time) presided with Mr Justice Avory and Mr Justice Horridge, while Sir F. E. Smith (Attorney-General) appeared for the Crown with the Solicitor-General, Sir George Cave.

That Grand Old Man of both Irish and English Bars, Serjeant Sullivan, appeared for the defence, and after he had raised every point that could be urged in favour of Casement, both in law and in logic, and after he had stretched every argument to its uttermost limits, there was a welter of oratory from counsel on both sides.

Nothing, however, exceeded the eloquence of Casement, when, after the jury had found him Guilty, he was asked whether he had anything to say why the sentence of the court should not be passed upon him. He drew a bulky package from a pocket, and with a satirical smile began to read.

"Loyalty," he began, "is a sentiment, not a law. It rests on love, not restraint. The Government of Ireland by England rests on restraint and not on law, and, since it demands no love it can evoke no loyalty . . . and so I am prouder to stand here to-day in the traitor's dock to answer this impeachment than to fill the place of my Right Honourable accusers. . . ."

Although Casement denied that any English court had the power to try him, he, like Joyce, appealed to the Court of Criminal Appeal. That appeal was dismissed.

In between sentence of death and the day of his execution Casement was stripped of his knighthood, and his name removed from the roll of the holders of the Order of St Michael and St George. During that period, too, many petitions praying clemency on behalf of this Irishman on the grounds that the rigours of public service, and the tropical fevers he had suffered during his career abroad, might have affected his mental balance. One petition was signed by such prominent figures in public life as Arnold Bennett, G. K.

Chesterton, Sir Arthur Conan Doyle, John Drinkwater, John Galsworthy, John Masefield, Izrael Zangwill and the Bishop of Winchester.

But to no avail. Casement went bravely to his death on August 3, 1916.

CHAPTER NINE

THE COURT OF CHANCERY

THE Court of Chancery, like most English courts of law, arose out of the legal requirements of a particular age. But long before there was any actual court there was a Chancellor, and a very important person he was, although his office was not quite so spectacular perhaps as that of the Justiciar.

The office is said to have been instituted either in the year 605, or by King Alfred in 887; but I can give you no authority for these dates. According to Stow, however, it was re-founded in 1067 or 1070. Mr Hanbury, a more modern authority, states that the Chancellor's office is the only one "that has gone from one holder to another in unbroken succession from 1066 to the present day, embellished and dignified by the tenure of the Great Seal."

Sir Henry Slesser, Lord Justice of Appeal in our own times, also emphasises the antiquity and importance of the office in *The Law* when he says: "The Chancellor, who later rose to judicial preeminence was then secretarial rather than executive in duty. He it was who issued from his Chancery the Writs. He also sat taking judicial business in the *Curia Regis* and later, in the Exchequer when that body became a separate court, and sometimes he also acted as an ordinary justice."

We may take it, then, that however obscure the origin of the office, it goes far back into the past. Arfastus or Herefast, chaplain to William I and Bishop of Elmham, was Lord Chancellor in 1067. Thomas à Becket occupied the same proud position in 1154 under Henry II until he resigned the office because of Henry's anti-clericalism.

The office was usually bestowed upon some ecclesiastical dignitary termed *Cancellarius* (or door keeper) who admitted suitors to the King's presence. Before he attained the high estate of judicial officer, however, the Chancellor had functioned in a secretarial capacity to the King and his Council, from whom in fact he derived his powers. He was a prominent member of the Council, concerned with its legal business, although not the head of the judicial system as he is to-day.

In the time of the early Norman kings, when the King's will was law, it was the Chancellor who did all the necessary writing (*writ*)

whereby the royal pronouncements could be passed on up and down the country without fear of the message being distorted on the way. These *writs* or documents always bore the Royal Seal sometimes called the Great Seal. This Seal was kept in the custody of the Chancellor, and it was his clerks who wrote out the ordinances of the King and sealed them. The sealing was done on a marble table near the marble bench which, as I have already mentioned, stood for centuries at one end of Westminster Hall.

The pay of the Chancellor was not what it is to-day. In the reign of Henry II, for example, he had, besides being lodged in the Royal Palace, an allowance of five shillings a day, a simnel (a form of bread or cake), two seasoned simnels, one sextary of household wine, one large wax candle and forty pieces of candle. That was when he was on tour with his royal master. If he dined at home, then he received only 3s. 6d. a day.

At present the salary of the Lord Chancellor is £10,000 a year. But one must bear in mind that he holds office only so long as the Government which appointed him remains in power.

At one time the Great Seal, "that pestiferous lump of metal", as Roger North once described it, was carried in the Purse of State, a richly emblazoned flat pouch; but, as the seal weighs seventeen pounds and rapidly wore out its container, this custom was abolished. The worn-out purses, however, became the property of the Lord Chancellor of the time, and there are many scions of legal families who treasure these ancient relics of past glories. The office of the Lord Chancellor is bestowed by handing the Great Seal into his custody.

The transition of the Chancellor from secretarial to judicial duties came about gradually, and, as I have said, through the needs of the period.

As we have seen, the Common Law as administered in the local and Assize Courts was of a rough and ready nature in early days. There were times when a litigant felt that those courts did not do justice to his case, or perhaps that they were even refusing him a fair redress for his grievance. The Common Law was administered very largely on a system of fixed rules and usages which were not too flexible; thus its working might sometimes result in injustice or hardship upon an individual.

There was always the right to petition the King and his Council for redress, and this reserve of royal justice was frequently appealed to.

Such petitions were always referred to the Chancellor who, as an

ecclesiastic, was relied on to bring some sense of morality and right dealing. He was often referred to as the "Keeper of the King's Conscience". It was he who considered all the details laid before him, and, in the effort to see that no injustice was inflicted in the King's name, decided what should be done.

If he felt that the complainant had made out a case, he would summon the defendant (issue a writ) to appear before him in person and make such answer as he could to the petition on oath. Note the difference in procedure. I pointed out in Chapter 8 that until 1843 no person having any interest in a case was permitted to give evidence in any Court of Common Law on his own behalf. But here, before the Chancellor, we find that long centuries ago he was summoned for that very purpose.

Supposing, then, that the Chancellor decided that the complainant had made out his case. He could not upset the judgment of the Common Law Court against which the person had petitioned the King, but he could order that if the defendant did not act as equity and conscience dictated, he would, if necessary, put him in prison. Being an ecclesiastic he would do this on the moral ground that if the defendant did not carry out his (the Chancellor's) orders he would be injuring his soul because he was doing something which should be against his conscience.

As W. M. Geldart points out in his *Elements of English Law*: "This sort of interference, which had started as a matter of special favour in special cases, gradually becomes a regular practice."

Thus, there developed side by side with the Common Law, that principle of English justice that became known as Equity. Sir Henry Slesser remarks: "There is no doubt that equity, from its very nature, was far more influenced by civil and canon law than was the common law. In the final resort it rested upon the ecclesiastical assumption that there is an ascertainable law of moral right and that the laws of equity should be applied whenever the application of strict law would be contrary to the moral code."

Gradually, too, petitions came to be addresssd to the Chancellor direct instead of to the King and his Council, and gradually also the decision of one Chancellor in a particular case would be followed by another Chancellor in a similar case, so that a system of established rules and precedents was set up.

Another point to bear in mind at this stage is that the Chancellor tried these cases himself, thus assuming the role of Judge in regard to both the facts and the law. As such he administered a new kind of law, outside that of its elder brother the Common Law.

Says Hanbury: "Appeals to the Chancellor were couched in humble and piteous terms; a suppliant for relief would implore the Chancellor to right his wrong 'for God and in way of charity'."

And, as Carter points out in his *History of English Courts*: "The Chancellor did not invent equity. Equity was inherent in the Royal extraordinary powers. The King's oath was to do justice and mercy; 'the King's face should shew grace'." The King's justice was done, and his face "shewed grace" through the office of his Chancellor.

As petitions became more numerous his judicial duties increased until the Chancellor's office became the Court of Chancery. With the increase of his judicial power his standing in the country rose in proportion until he became, as he remains to this day, the first lay subject in the land after princes of royal blood.

Our records dealing with Chancery are extremely scanty, particularly in connection with the cases tried in the Chancery Court. But to show something of the antiquity of the Chancellor's office it may be mentioned that the first *Register of Writs* goes back to the year 1227. Of course earlier registers must have been compiled long before that year, and must have been contained in the Chancery archives.

So far as the actual proceedings in Chancery are concerned, we have no records earlier than the reign of Richard II, 1377–1399, approximately 150 years after our earliest *Register of Writs*. They are contained in *Calendars of the Proceedings in Chancery*, and, brief though the details are, they do give some idea of the nature of the plaints that came before the Chancellors from the time of Richard up to the reign of Elizabeth.

I have culled the following extracts from some of the Calendars, from the excellent book by Mr Carter on *English Legal Institutions*:

Kymberley v. *Goldsmith*. Bill for non-delivery to plaintiff, "to his importable losse and hindryng" of a ton of woad which defendant had sold him and which had been paid for in wool.

Another, in the time of Henry IV, is a petition from "your poor orator William de Egremont, parson of Workington", alleging that one Richard Goldsmith did horribly assault him in church and imprisoned his servants till he paid £10 as ransom. That our Lord the King had sent writs, but only with the result of making him "more malicious and horrible than ever;" and that he subsequently attempted to murder the plaintiff on the highway and still threatened him, so that he durst not abide in the country or live in the parsonage (prayer for Subpoena, and that the defendant find sufficient surety of the peace).

In the reign of Henry V is found a Bill addressed to the Master of the Rolls, complaining that the defendant had ravished his servant maid, and beseeching the Master of the Rolls to "tenderly consider the premissis and thereupon to set due correction."

Later on in Henry VI's time one Hodges petitions Chancery to restrain defendant by oath from using the "sotill craftys of enchantement wychecraft and sorcerye" whereby "he brake his legge and foul was hert."

From these it will be gathered that the Court of Chancery did not lack the spice of variety in the cases which came before it, so that when at length it flourished as a fully-fledged court of law in Westminster Hall, it brought yet another side of English legal life into being.

Mention of the Master of the Rolls in the case of the ravished maid-servant in Henry V's time may arouse some curiosity as to who that gentleman was and what part he played in the legal life of the community.

He appeared in the 15th century as Keeper of the State Rolls. Later, he became a Judge in the Court of Chancery, and later still, in quite recent times, he became President of the Court of Appeal. He ranks third in the judicial hierarchy (the Lord Chancellor, and the Lord Chief Justice alone having precedence over him) and he is the head of the Public Record Office and Chairman of the Historical Commission.

Explaining the rise of the Master of the Rolls Mr Geldart tells us: "It was clear that Chancery was doing work which the Common Law Courts could not or would not do, and without which men's rights could not be sufficiently protected. Equity had come to stay as part of the law of the land.

"The work increases. The Master of the Rolls, who is originally a very subordinate officer, with charge of the documents of the court, comes to be, at the end of the seventeenth century a Judge who can hear Equity cases, though there is an appeal from him to the Chancellor."

The Court of Chancery was originally situated in the south-west corner of Westminster Hall. According to Mr Mackenzie Walcott in his *Memorials of Westminster*, the court derived its name from "the bar of open timber-work (*cancelli*) which separated this court (in the last century completely shutting it out of sight) from the lower part of the Hall."

It was here that the Lord Chancellor sat, together with the Master of the Rolls and eleven other men "learned in the civil law", who were called Masters in Chancery.

It differed from the Common Law Courts for, whereas the object of civil law was to redress wrongs, the object of criminal law was to punish the wrongdoer.

As there was rivalry between the King's Bench, Exchequer, and Common Pleas Courts to gather as much legal business as possible into their hands, so there was a prolonged rivalry between the Chancery Court and the three courts of Common Law.

The Chancellor strove hard to increase his jurisdiction in matters that had hitherto been dealt with by the other courts, and they in turn fought against any encroachment on their preserves. This struggle took place after the cleavage in Chancery began between the judicial functions of the Chancellor, and the administrative side of his work—the issue of Writs, and the like. This would be some time in the 14th century, but at no time has this cleavage ever become complete, and the Chancellor still has his purely administrative duties to carry out in addition to his judicial functions.

In fact, to this day, the Writs which he issues, summoning a person to attend any of the High Courts, are still couched in almost the same terms, and are still issued in the name of the King and not in the name of either of the parties concerned in an action; exactly as they were way back in the 12th century.

The wording begins: "George, by the grace of God, etc. to (naming the party concerned), greeting. . . ."

In the struggle for power which went on between the various courts, none was more prolonged or bitter than that over the matter of Injunctions. It began during the reign of Henry VI, 1422–1471, when Lord Chancellor Waynflete cancelled, by decree, a certain bond in connection with a debt.

There followed an action in the Court of Common Pleas in which the Judges held that, while the Chancellor could put the offending party in prison to enforce his decree, that party could still sue for his rights in a court of Common Law. It was at this point that the Chancellor, not to be outwitted, issued an Injunction forbidding the plaintiff to proceed with his action, or, if he had already proceeded and obtained judgment, forbidding him to execute that judgment.

From that moment the battle was on. A few years later, in the reign of Edward IV, there was another case where the Chancellor granted an injunction in connection with a verdict in the King's Bench Court, declaring that the verdict had been obtained by fraud. In this instance things were amicably arranged between the Chancellor and the Lord Chief Justice, but the struggle continued through Elizabeth's time right up to the year 1616 when there occurred the

final battle royal between Sir Edward Coke (Lord Chief Justice from 1613–1617) and Lord Ellesmere, the Lord Chancellor of that day.

A verdict had been obtained by the most palpable fraud in a trial before Coke. A necessary witness in the case had been decoyed away by the "other side", and taken to a tavern where he was plied with drink to such extent that he would not have been able to give evidence, even if he had been called upon to do so. But that was by no means the worst part of the story. When the name of this witness was called, Sir Edward Coke was informed by someone engaged in the case, that "he had just left the witness in such a state that if he were to continue in it a quarter of an hour longer, he would be a dead man." So the trial went on and the decoying party won his case.

Very promptly, and very properly one may think, the Chancellor issued an injunction restraining the successful party from executing Coke's judgment. The legal fat was then in the fire. Indictments on all hands were preferred on the grounds that Equity had no right to question a judgment which had been given in the King's Bench Court. James I consulted his law officers, and on their advice supported the Chancellor, adding that it was part of his "princely office", and suitable for his "princely wisdom" to determine disputes between his several courts.

From that time onwards, there was never any dispute as to the right of the Chancery Court to issue injunctions.

With this brief outline of the origin and development of the Court of Chancery, let us consider what sort of jurisdiction it has, and with what type of cases it is called upon to deal. When we refer to the King's Bench we invariably talk about actions. This indicates that the litigants concerned are disputing certain questions. In the Chancery Court (I am still using the term Court rather than Division for my own convenience) one often refers to actions and matters, and in the use of the latter word it may indicate that it is not a question of dispute, but rather one of a litigant seeking guidance on some legal difficulty.

Generally speaking the matters that go before the Chancery Court are connected with the administration of the estates of deceased persons, questions of partnership and mortgages, contractual rights, execution of trust, the wardship of children and the looking after of infants' estates, and also the highly romantic business of looking after those alluring "millions in Chancery".

Who has not read of the wealth beyond the dreams of avarice wrapped up in the musty parchment files of the Chancery Court? Who has not been intrigued from time to time when it has been

reported that a claimant, or usually claimants in large numbers, are going to institute claims to the "millions" of the Edwards, Mayer, Page, Angell or Taylor estates, believed to be in the hands of the Chancellor, and only waiting an approved claimant to open the coffers of this worthy gentleman?

There have been countless claims in connection with these fortunes. It has been estimated that since John Angell died in 1774 more than five thousand people have put in claims during the intervening years. And even to-day there are some optimistic descendants who hope to prove that they are the legitimate heirs to the Angell estates, which are said to include the land on which stand Brixton, Stockwell, Lambeth, Streatham, Walworth, Balham, Thornton Heath, Purley and Riddlesdown.

Let me utter a timely warning! The Court of Chancery is as jealous of its Dormant Funds, as they are called, as it is of its wide powers of jurisdiction. It is no easy task to get money from Chancery, for the Court holds it to be its duty to hold securely what it has got, rather than assist claimants. The legal processes by which such funds may be obtained are both costly and lengthy.

The reason why there is so much money in Chancery is that all the people who should have inherited it are dead. The sums thus accumulated in this account will consequently remain in Chancery for ever, unless some other law is passed by Parliament. Nor will these funds increase, because they are not invested; thus they will lie there idle simply because there is nowhere else for them to lie.

Peter Thelluson, a London merchant who died in 1793, was responsible for bringing about a change in the English law of succession. He left a sum of £800,000 with the directions in his will that this sum should be allowed to accumulate until his grandson's grandson should come of age.

This strange bequest was considered to be so fantastic as to be opposed to public policy. It was estimated that by the time the grandson's grandson came of age the fortune would have reached the neighbourhood of £140,000,000. The family brought an action in Chancery to have the will set aside, but it was confirmed instead. They took the case to the House of Lords, and again it was held that the will must stand. As there was seen to be a danger in permitting the entailing of estates to go on unchecked, however, an Act, now known as Thelluson's Act, was passed in 1800 prohibiting such eccentricity as had been displayed by this London merchant. Ever since that time bequests of money to accumulate for a longer period than 21 years have been illegal.

The Thelluson fortune was finally distributed in 1859, when it was found that, owing to mismanagement and cost of litigation, the descendants did not receive such a large amount after all.

It may be difficult to visualise the Lord Chancellor as a Fairy Godfather, but such in fact he is to many hundreds of orphans and other children. For rich and poor alike, his Chancery Court exercises a benevolent and wise jurisdiction over the lives of the young persons who for a variety of reasons may have become his "wards in Chancery".

Some of them may be the children of parents who have separated, or who have otherwise become unfitted to bring up their offspring. In other instances the Court has been appointed guardian when the parents have died and there is no other suitable relative or friend to undertake their care.

Let it be said, too, that the Chancellor is just as jealous of the well-being of his charges as he is of safeguarding his Dormant Funds. The Court is appointed guardian by will or deed, and it can overrule the wishes of anyone regarding the religious training of a ward. The choice of college or university is also within the discretion of this powerful legal "relative".

In the event of a man wanting to marry a ward in Chancery he must first propose, not to the girl, but to the Chancellor! The necessary form for such a proposal can be obtained from a lawyer. It is unwise to flout the authority of his Lordship by running off with a ward, though this frequently was done in days gone by.

Mr Justice Mitchell, who contrived to marry a Miss Hughes to an Islington schoolmaster, was committed to the old Fleet Prison which once stood on the east side of Farringdon Street, London, for, "the most flagrant contempt of the Court that ever appeared before it."

Miss Hughes, it may be mentioned, had a fortune of £30,000, and one may rest assured that Mr Justice Mitchell was hopeful that his part in the scheme would not go unrewarded. After being "a close prisoner within the walls" of the gaol, he petitioned the Chancery Court "to be discharged out of the custody" of the prison.

He was successful in obtaining his release, but was prohibited from practising at the Bar again; he was also struck from the commission of the justices of the peace.

Wardship and marriage were a source of litigation for centuries, because the laws concerning these matters were of financial interest.

Referring to the passing of the *Statute of Uses* in 1535, during the reign of Henry VIII, Mr Geldart tells us that "The King's main

object in forcing the Act through Parliament was to regain the revenue from the incidents of feudal tenure which had been depleted by the practice of conveying land to uses''. In a footnote the author goes on to explain, ''Some of the most burdensome of these incidents were *Wardship and Marriage*—the lord had the right to the wardship of the lands of his deceased tenant's infant heir, and was not accountable for the profits, and when the heir came of age he could marry him or her to anyone he chose; if the heir refused to marry the person proposed, he had to pay the value of the marriage, i.e. the sum which the person proposed as wife or husband was willing to pay the lord for the marriage; *Reliefs*—a sum due from a tenant when he succeeded to his father's estate; *Escheat*—the right which the lord had to take back the land if the tenant died without heirs, or, till 1870, if he committed a felony.''

Small wonder, then, Henry VIII should be anxious to get these means of raising revenue back into his own hands.

Meanwhile the ecclesiastic had vanished from the office of Chancellor, for it had become clear that his judicial functions demanded more legal knowledge to cope with the conditions of life as they became more complex. From the Reformation, then, we find that the Chancellor is more and more drawn from those learned in law. The last clerical Chancellor was Bishop Williams who held office in the reigns of James I and Charles I. Lord Shaftesbury, 1672, was the last Chancellor who had never been a practising lawyer.

One often hears of the ''law's long delays'', and nobody has satirised it more pungently than Charles Dickens. And no Court has been more guilty in this respect than the Court of Chancery.

Mr Geldart remarks on this laggard justice as follows: ''The work of the court was too much for the Judges; and this cause of delay was aggravated by the dilatory character of the procedure, and by the time some of the Chancellors took to consider their decisions. At the beginning of the 19th century we find Lord Eldon (twice Lord Chancellor, 1801–1806 and 1807–1827) sometimes keeping a case for ten years to think over, and not delivering judgment till perhaps most of the parties were dead and most of the property had gone in costs.''

But ten years would seem to be a small period compared with the case of Mornington *v.* Mornington in 1868. This suit in Chancery dragged on for 29 years before the Countess of Mornington was awarded a sum of £22,000 in respect of her claim.

And even 29 years becomes a short period when compared with a more recent settlement of a Chancery case which began when the

present claimant, the Countess of Loudoun was a 12-year-old Ward in Chancery.

It was in the year 1895 that Baron Donington died, leaving property in the Midlands and Scotland. At the time of his death the Baron owed some £600,000. Legal proceedings began in the year 1896 when Mr Justice Kekewich made an order for the properties to be administered by the Chancery Court. Under the wise administration of this court, the heavy liabilities were wiped off with the result that the estate, at the time of the recent action in 1949, was worth about £200,000.

We must absolve the Court of Chancery from any blame in connection with delay in the distribution of the estate, because the great difficulty that prevented this was outside its jurisdiction. The heirs could not press for previous settlement because they had all to be adults, sane and solvent. That is why the case remained unsettled until June 1949, 53 years after the first proceedings had been brought when, for the first time in 53 years, none of the claimants (who at one time numbered 40) was then a minor, bankrupt, or a lunatic.

The manner in which this was achieved was a masterpiece of legal strategy. Nine firms of solicitors representing different members of the family, agreed in the most friendly atmosphere to sell the rights of their clients to Countess Loudoun, and then divide up the proceeds out of court.

This was done, and the Countess of Loudoun, as a nominee, petitioned the Court for the payment out of funds in court. All further proceedings would then cease, and the case be closed.

The hearing was before Mr Justice Roxburgh who ordered that the money should be paid out on the terms stated above. Thus, after a lapse of over half a century, and at a cost of some £50,000 in legal expenses, the Donington estates have been finally disposed of.

There will be many readers who remember the sensation that was created in 1919 when the two "Stobart Babies", as they became known, were reported missing, and a warrant was issued by the Chancery Court for their detention.

The children were Phyllis Claire Stobart aged 4½, and her 2½-year-old sister, Joan. Photographs of the two babies were published in every newspaper, showing them dressed in their sailor suits. A systematic search was made throughout the country, and the Lord Chancellor's Tipstaff, together with detectives, combined in tracing the missing children.

The Chancellor's warrant was quaintly worded. Addressed to the Tipstaff, and bearing the signature of Lord Birkenhead, it gave orders

that the Tipstaff and his officers should "make diligent search after the bodies of the said Phyllis Claire Stobart and Joan Stobart, and, wheresoever you shall find them to arrest and apprehend them."

Phyllis and Joan were the granddaughters of Mrs Stobart Greenhalgh, who became famous for her courageous work among the Serbian armies in the Balkans during the 1914–1918 war. Their father was Lionel Stobart, who died in British Columbia in 1918. On his death, the babies went to live with their maternal grandparents Mr and Mrs Harold Platt Christie. Then the mother decided she would like to bring them to England. She died, however, at Montreal on the journey, and it was Mr and Mrs Christie who eventually brought the children to England where they stayed with Mr and Mrs Greenhalgh.

The Christies were anxious to retain custody of the children, and Mrs Greenhalgh had no objection providing they remained in this country, as she knew that her son would have wished his babies to be brought up in England. An agreement to this effect was entered into, but suddenly both the Christies and the children vanished from a house in Bournemouth where they were having a brief holiday; to her great distress Mrs Greenhalgh learned that the Christies were about to return to Canada, taking the children with them.

The aid of the Chancery Court was invoked, and both children were made Wards of the Court.

Within a few days, however, the girls were traced to France where they had been taken by their grandparents. Everything was settled amicably between the parties, and no action was necessary in the Chancery Court. The children were returned to Mrs Greenhalgh, and grew up under her care.

Looking upon a wife as a chattel did not apparently die out in mediaeval times. In October 1950 a strange story was told of Mr Sidney Herbert Clay, a solicitor of East Retford, who died in 1946 leaving gross estate of £160,000; net £92,000. A wealthy man, and an Alderman, he took infinite joy in bestowing lavish gifts on the town in which he lived.

But he was careful to the point of parsimony where his own wife and family were concerned.

When he died it was found that while he had left the bulk of his money to a number of charities, he had left his 74-year-old wife a sum of £500 a year and £100 with the household and personal effects; to his daughter an annuity of £150, with £130 annuity to his son.

The widow and daughter came before Mr Justice Vaisey in the

Chancery Court, and asked him to allocate larger sums, more in accordance with the wealth left behind by Mr Clay. Neither of them made any complaint against the charities which had benefited.

During the hearing a note-book kept by the deceased was referred to. In it was detailed a quarterly allowance which he made to his wife, for which she used to sign. Up to the moment of his death he recorded every halfpenny he spent either on himself or his family. A bus-ride or the price of a newspaper would be faithfully recorded.

"Mean and unreasonable, and in some respects a domestic tyrant," was how Mr Charles Russell, K.C., described the dead man, and the Judge endorsed this view when giving judgment.

"It is one of the most extraordinary cases I have come across," he commented. "This man seems to have kept his family in utter poverty for years. . . . The story of the poverty in which the daughter had been compelled to live was very painful. It appeared that frequently she had not enough money to provide for herself more than one meal a day. . . . It seems incredible apart from some obliquity of vision that he could have treated his wife and daughter with whom he was on terms of affection, in the mean and cruel and apparently heartless manner which the evidence makes quite clear is the proper way to describe it."

His Lordship then increased the annuity left to the wife from £500 to £1,400, and that of the daughter to £650 a year.

But Mr Clay was clearly not a mean man by nature. He had not only presented the whole of the furniture to the new Retford Town Hall, but in 1935 he had also furnished the new court house in the town, making it one of the finest appointed courts in the country. His name also figured prominently in charity lists. "A pathological case," remarked the Judge.

When I come to deal with the origin and survival of some of our lesser-known courts, such as the Salford Hundred, the Bristol Tolzey, and the Court of Arches among others, I shall go into a little more detail concerning the part they played in the story of English justice. For the moment I want to take you to the Lancaster Chancery Court which has survived all the vicissitudes that followed the passing of the Judicature Act of 1873.

As late as December 1950 there came before Sir Leonard Stone, the Vice-Chancellor of this court, an elderly spinster, a Miss Ethel Jane Walker of Grosvenor Street, Chorlton-on-Medlock. She claimed the possession of her house, and the repayment of £2,150 from Mr Thomas W. L. C. Gordon Lennox.

She alleged that the defendant, who was said to have kept some

twenty dogs and a number of ducks on the premises, went to live at her home in 1944, and slept in her screened off bedroom. Under his persuasion, she told the court, she withdrew £1,700 from the bank and sold a number of gold coins for £1,650. She agreed that he had paid back £1,200.

Mr Gordon Lennox declared that Miss Walker had promised him £1,500 and a home for life if he would stay with her, and he agreed.

"We lived together as man and wife," he stated in evidence. "We were very happy and never quarrelled. But I got only £200 of the amount promised. I was the pawn. Unfortunately I fell into a trap. After three years she left me."

He also stated that the plaintiff had signed a document accepting £1,200 in settlement of his claims.

Giving judgment for Miss Walker, Sir Leonard Stone ordered Mr Lennox to give up the house immediately. He held that Miss Walker was not bound by the document she had signed, and described Mr Lennox as having been a trespasser since 1947. The Vice-Chancellor added that he accepted the woman's version of their relationship, and that there was no trace of familiarity.

This case throws a little more light on the varied character of the trials which come before the Court of Chancery.

After the creation of the Courts of Justice at Temple Bar some Chancery Judges were sent on circuit to a few selected towns, like their brothers of the King's Bench. Somehow the scheme was not a success, and was eventually abandoned.

Anybody who may wish to bring an action in Chancery must now go to the High Court in London, unless within the jurisdiction of Lancaster or Durham. Nowadays the court at Durham is seldom if ever used, but the Lancaster Chancery Court, as we have just seen, still plays a lively part in the administration of Equity in the north of England.

CHAPTER TEN

THE HOUSE OF LORDS

THE House of Lords is probably better known for its political activities as a Second Chamber engaged, among other things, in passing into law or rejecting Bills which have already been approved by a majority in the House of Commons. But it is also a Second Chamber, and sometimes a Third, in connection with the administration of justice in a purely legal sense; and it is with that aspect of its functions that I propose to deal in this chapter. For it plays, and has played throughout the centuries, a vitally important part in the development of England's legal system.

As the Supreme Court of Appeal in all matters, civil and criminal alike, the House of Lords is the final court where verdicts which have been given in a lower court, and which have either been confirmed or upset by the Court of Appeal or Court of Criminal Appeal, may finally and beyond all question be confirmed or set aside.

Thus it is the highest court in the land. There is no further appeal to any other tribunal, and its decision is absolute and binding even upon itself. Any judgment that it gives can only be upset by the passing of an Act of Parliament.

In its operation, too, we have yet another example of that axiom of English justice which demands that the law shall apply to rich and poor alike; appeal to this tribunal is available to the humblest member of the community, no matter how poor he or she may be, as well as to the highest and wealthiest in the land. Scrupulous care is exercised to ensure that no appeals of a frivolous or wanton nature come before the court, and the *fiat* of the Attorney-General has to be obtained by anyone who seeks redress in this all-powerful court.

One point I must emphasise at this stage. It is not the Peers themselves who sit as Judges at these appeals. Surprising as it may seem, many people do not appreciate this important point. Only qualified lawyers, who have attained the dignity of the peerage through being raised from the judicial bench, and who have had long years of experience both in matters of law and its administration, are appeal Judges in the House of Lords. These Law Lords, as they are called, are the supreme and final judges upon all the legal arguments urged by counsel on either side.

Not until the passing of the Appellate Jurisdiction Act of 1876 did

it become statutory law, that this final Court of Appeal should consist only of professional lawyers, holders and ex-holders of high judicial office.

The Law Lords' decisions, as we shall see, have often swept aside the laws and traditions of centuries and resulted in new Statutes being placed upon the Statute book.

Once more we have to go back to pre-Conquest days to discover the origin of this Court. Before the reign of William I, the King was assisted in the government of his realm by a Great Council called the *Witan*. This Council was composed of bishops and superior clergy (archbishops) and the nobles of that day. Mr Freeman, in his *Growth of the English Constitution*, states: "The House of Lords not only springs out of, it actually is, the ancient Witenagemot. I can see no break between the two. King William summoned his Witan as King Edward had summoned them before him."

This was the King's Great Council to which I have referred in a previous chapter. An *Assembly of the Wise*, it was sometimes called, whose duty was to advise the monarch. There has never been a time since England was united into a single kingdom when some sort of assembly of this kind did not aid the King in this manner. After the Conquest, William and other Norman kings would call together their Great Council. It was composed of the feudal lords who held land directly from the king, and who, by virtue of their lands or offices, sat in the Council "in their own right". It was not till later that elected representatives were added to the assembly, thus establishing the vital difference between the feudal Great Council and our modern Parliament.

It is in the working of this Council that we find the first suggestion of the judicial part that is to be played in the future by Parliament in general and by the House of Lords in particular. Although its members were for the most part the nobles and ecclesiastics, the King's judges were also included among its numbers; and in the same way that Judges sat and took part in the deliberations of the Council, so could non-legal members of the Council sit as Judges in the courts.

The Council would also decide such judicial questions where the Judge might find himself in some difficulty in dealing with a particular case, and felt that he required the support of his fellow councillors. But the fact remains that the Council was, as Mr C. H. McIlwain says in *The High Court of Parliament and its Supremacy*, a "court of law, advisory council, and exchequer all in one."

In Magna Carta it was referred to as the "Common Counsel of

Our Realm", and I would call attention to the use of the word Counsel. It enjoyed both administrative and judicial powers, and one might say that it was the germ of our modern Parliament. During the reign of Henry III, 1216–1272, this body flourished.

Mr McIlwain remarks that the first contemporary mention of the word Parliament as a name for the common council of the realm was as far back as 1246, by one Matthew Paris. He adds that the first use of the word in any act or statute was in the preamble of the First Statute of Westminster in the reign of Edward I. But it was nearly twenty years later that Parliament, as we understand it to-day, really began.

Then, in the year 1265, during the barons' wars against the King, Simon de Montfort, for the first time in history, summoned knights of the shires and boroughs to attend the Great Council, and it was then, one may say, that Parliament as a representative element came into being.

Thirty years later, in 1295, Edward I, to whom we owe so much of our legal advancement, called together an assembly which established it as a rule that there should be representatives of the counties and towns along with the lords. This was called the Model Parliament because it became the model for succeeding bodies in England.

In 1305, Edward I held a Parliament at which some six hundred men were present. After about three weeks, proclamation was made that everybody might go home "except the bishops, counts, barons, justices and others who are of the Council of our Lord the King." Thus there began the cleavage between the Council and Parliament which became complete in the reign of Richard II, 1377–1399, and is referred to by Mr Carter in the *History of the English Courts*. He summarises the position thus:

"When the final separation of Council and Parliament came, the Parliament Roll, which was once the record of business done by Council, became the record of the Estates of the Realm (the lords spiritual, the lords temporal, and the commons) and the Appellate jurisdiction remained in the Lords' House of Parliament."

But this function of the House of Lords as a court of appeal had already been foreshadowed during the last year of Edward III's reign, 1377, when it was mentioned in a document that it was the unanimous opinion of the Judges regarding appeals that any question of error in the King's Bench should be amended in Parliament.

As Mr McIlwain points out: "The most easily marked distinction between the House of Lords and the Council in these early days seems to be that in the Lords' House the Judges advised only; in the

early Council they both advised and voted." He adds later, "When the jurisdiction of the Council ended and that of the House of Lords began is one of the unsolved questions of early English history."

Professor Baldwin, in an article in the *English Historical Review* (Vol. 23), also emphasises the judicial side of Parliament when he states: "It was furthermore enjoined repeatedly by ordinances of Parliament that the council should summon these advisers in all legal questions, and that the justices should not fail to attend and render their services."

To wind up this all too inadequate story of the origin of the judicial functions of the House of Lords, let me conclude with one final quotation from Mr McIlwain. He says:

"From the fourteenth century we may say that the machinery of English government was practically complete—separate courts of law, a court of chancery, a council with important functions separate from Parliament, *the House of Lords the highest judicial body in the state. . . .*"

The italics are mine.

It was a tribunal technically styled the King in Parliament, and one could wish that the history of its origin was a little more clear.

With the advent of Parliament another strand was woven into the fabric of English law. I have already dealt with our Common Law (that founded upon custom and usage which tradition has handed down to us from earliest times), and Equity (which rectified any injustice or hardships that the strict application of the Common Law might entail).

Now we come to what is called Statute Law, that law enacted by Parliament itself or by subordinate bodies to which Parliament has delegated law-making powers.

Day in, day out, year in, year out, Parliament adds to the laws of our land. The great majority of these laws deal with administration, such as the raising and spending of money and the institution and working of social services. But Parliament also deals with what are known as private laws, those affecting the relation between individuals. Only an occasional interest is taken in that side of law-making, and most Parliamentary time is taken up with the making of what we call statutory law.

During the reign of Edward I, there was great activity in private law, but for many centuries afterwards Parliament left that aspect of legal development to the Judges. Since the reign of William IV, 1830–1837, a great deal of private law has been put in statutory form,

such as our laws in regard to land, trusts, bills of exchange, partnership and the sale of goods.

Let us now endeavour to trace the manner in which the House of Lords performed its judicial functions in the early days. In the first place it is well to remember that Parliament was first thought of as a court rather than as a legislature. It was in fact called the High Court of Parliament.

The first cases with which the House of Lords had to deal were the trials of any of its members who had committed treason or felony. This trial of Peers by their Peers really originated before the advent of Parliament, at the time of Magna Carta in which the Privilege of Peerage, the right of a Peer to be tried by his Peers (equals), is set out in clause 39. I speak of it as his right, but really he has no option. He cannot waive his privilege. Neither can a Peeress, who under an Act of 1441 was admitted to the same "privilege". Under this same Act, the "privilege" does not extend to misdemeanours; for a Peer charged with these lesser crimes may be tried by magistrates and Judges in criminal courts, just like anybody of less exalted rank. There was, for example, the late Lord Kylsant, who was sentenced to a term of imprisonment at the Old Bailey in connection with company frauds.

Then there was the Duke of Manchester, who was sentenced at the Old Bailey to nine months' imprisonment for allegedly obtaining money by false pretences. That conviction was afterwards quashed at the Court of Criminal Appeal in 1935.

I mention these only in passing, but I shall have more to say about the trials of Peers by their Peers when I come to the last of all trials of this kind—that of the young Lord de Clifford in 1935, on a charge of manslaughter.

To return to the subject of early trials by the Lords in Parliament (as they were known before they were termed Peers of the Realm in the year 1330), Simon de Bereford stood charged on impeachment by the House of Commons with treason. With ill grace, the Peers heard the evidence and gave judgment, but in doing so made eloquent protests that they were not bound to try any other persons than peers.

Impeachment, I should mention, was a process by which the Commons could bring a charge against any person in connection with an offence against the State. The Lower House still has this right, but I doubt very much whether it will ever be exercised again. The last occasion was when Lord Melville was brought before the Bar of the House of Lords in 1808, charged with "high crimes and misdemeanours". He was acquitted on these counts.

Fifty-seven years after the trial of Simon de Bereford, the Lords appear to have gone in reverse, so to speak. In a case of treason against the Archbishop of York other peers *and commoners* in 1387, they claimed the *right* to sit in judgment upon both peers *and* commoners in crimes against the State. What is more they *did* try them.

But as with all the other courts that arose, the flavour of judicial power became sweet, and after the Restoration the Lords in Parliament began to claim wider jurisdiction even to the extent of holding trials of the first instance, that is trying an action without any resort having been made to any previous court.

The climax came in the year 1668 when Mr Skinner sued the East India Company for damages in connection with an injury which he stated had been sustained in Sumatra. He petitioned King James II on the grounds that he could not get redress in any other court. The King referred the matter to the House of Lords, who tried the issue and awarded Skinner £5,000.

It was then the turn of the East India Company, who petitioned the House of Commons. And, just as there was rivalry between the courts of law in connection with their various jurisdictions, so was there rivalry between the two Houses of Parliament. On this occasion it blew up into a major dispute, and it was only the diplomatic handling of the position by the King that smoothed things over. All records of the proceedings were ordered to be erased from the journals of both Houses, and it is significant that the House of Lords has never since acted as a court of first instance.

An example of its work as an appeal court proper is to be found in the famous Bankers Case of 1696. This was the outcome of the expensive tastes of Charles II, who entered into a secret treaty with Louis XIV to become a Roman Catholic and help Louis, in return for an annual payment. This was the Treaty of Dover of 1670. Even then his needs were not met, so he negotiated huge loans with the bankers of that day, pledging the public revenue as security. After he died in 1685, and with James II on the throne, some years of turmoil arose with James alienating his people. When in 1696 the financial supremity of the House of Commons was established, the bankers who had lent Charles such large sums, sought to get it back. They applied to the Exchequer Court who decided in favour of the bankers. But the Crown was not going to part with its money so easily, and an appeal was made to the Exchequer Chamber. Lord Keeper Somers, in a highly technical judgment, put the case so strongly against the bankers that the appeal was granted. The

bankers then took the case to the House of Lords where the decision of the Exchequer *Chamber* was reversed, and that given by the lower Exchequer *Court* was sustained.

One of the luckiest men ever to appear at the Bar of the House of Lords was the degenerate Lord Mohun. This nobleman was tried twice by his Peers on charges of murder, and on each occasion was acquitted. On the first occasion in 1693 it was in connection with the attempted abduction of Mrs Ann Bracegirdle, a dazzling beauty of the stage, as talented as she was lovely. Among Mohun's friends was Captain Richard Hill. He conceived such a passion for Ann Bracegirdle that he and Mohun entered into a plot to abduct the girl and carry her off to some quiet country place, where he might secure by force what was denied him by the actress, whose affections were already centred on a Mr Mountford.

With all the villainous trappings of melodrama, and strictly in keeping with that age, a coach and two prancing horses drew up outside Lord Craven's house in Drury Lane. Seated in the driver's seat was Lord Mohun, with an armoury of pistols about his person, while nearby stood Captain Hill with half-a-dozen soldiers whom he had enlisted for the enterprise.

As soon as Ann Bracegirdle appeared she was set upon and dragged towards the coach. She shrieked for help; she was well known for her charitable work in the district and crowds of people rushed to her assistance. After a fierce fight the ungallant Captain and his soldiery were forced to abandon the plot.

That same night, however, Hill and Mohun lurked outside the house of the favoured Mountford in Norfolk Street, Strand. When he emerged on his way to see the actress, Hill rushed madly at him with drawn sword and plunged the weapon right through his body till it came out the other side. Then Hill ran off, leaving Mohun to be captured and later brought before his Peers in the House of Lords.

It had long been the law that if a person be one of a party engaged in a felonious act, and is present when another person is murdered, then he is equally guilty in law, and can be tried on the capital charge.

Because Lord Mohun had not drawn his sword 69 of his fellow Peers declared him to be Not Guilty while only 14 convicted him of murder.

This narrow escape from being hanged was no deterrent to his lordship.

Not long afterwards, in 1698, he was indicted for participating in the murder of Captain Coote, who had quarrelled with a Captain French with the result that a duel was to be fought in Leicester

Fields, now Leicester Square, in London. Everyone was so drunk that they had to be carried to the rendezvous in chairs, and Mohun suggested postponing the duel till the morrow. But it was decided to fight it out, and Mohun took a prominent part in the arrangements. Coote was killed, and both Lord Warwick and Lord Mohun eventually appeared before the House of Lords in 1699 for their part in this capital offence.

Mohun was once more acquitted because he had suggested that the duel should be postponed. Warwick was convicted of manslaughter, but pleading "benefit of clergy", he escaped death.

Mohun might have appeared before the House of Lords a third time, if he had survived another duel which arose out of a violent political feud, and in which he was one of the participants. The Duke of Hamilton had been selected by the Tories to go to Paris as English Ambassador. The Whigs were furious; none more so than Lord Mohun who promptly challenged the Duke to a duel. All the bitterness of party feeling came to the surface when the two antagonists met.

Each rushed wildly at the other, with little or no pretence at swordmanship. They clashed with such violence that the weapon of each sank right up to the hilt in the body of the other so that both combatants died.

There were no mourners over Lord Mohun, with whose death the title became extinct.

Every type of case has, at one time or another, been the subject of appeal to the House of Lords, from complicated industrial cases to matrimonial suits; from murder appeals to the enticement of a maid from her employment. History has been made in the sombre dignity of Westminster Hall, where such appeals were heard before the High Courts of Justice were moved to Temple Bar, and in the chamber at Westminster where they are heard to-day.

So far as appeals are concerned, it was the practice in earlier times, as far back as the reign of Edward III, for certain peers selected by the King, and assisted by the Judges, to hear appeals. Later on, the House itself assumed this power of choosing which peers should sit in judgment. But so badly did they carry out their duties after the Restoration, so utterly biassed were their decisions, and so regardless were they of law or morality, that it was decided in 1834 that none but Peers who had served in a legal capacity should sit for the hearing of appeals.

As legal questions became more and more involved, the need for men learned in law became more urgent. Never was this more

strongly established than in the famous McNaughton Case in 1843, in connection with the legal definition of insanity which holds good to this day. It was one of the most important questions ever deliberated upon by the Law Lords and Judges who were summoned to decide what state of mind was necessary to make a murderer responsible in law for his act.

To-day, whenever the defence of insanity is raised at any murder trial, counsel on either side invariably refer to the McNaughton Findings.

The whole question revolved around a hard-working and thrifty Glasgow wood-turner named McNaughton. For about a fortnight before January 20, 1843, he was seen in Whitehall. On that day when one Edward Drummond was leaving the office of the Prime Minister, Sir Robert Peel, in Downing Street, McNaughton followed him for a short distance, then crept up behind him and shot him dead.

He declared later that he thought Drummond was Sir Robert, whom he had intended to kill.

At his trial, the evidence was definite that the prisoner was insane. The jury returned a verdict that he was Not Guilty on the grounds of insanity. Public feeling was both strong and divided on this verdict. To satisfy the public clamour the House of Lords convened a meeting of all the Judges of that day, and addressed to them five questions on the legal definition of insanity, inviting them to give their opinions.

There is neither need nor space to delve into all the matters raised, but in effect the final decision arrived at can be summarised as follows:

> That no act is a crime if the person who commits it is, at the time, prevented by any disease of the mind from
>
> (1) Knowing the nature and quality of his act.
>
> (2) Knowing that the act is wrong, or
>
> (3) Is incapable of controlling his own conduct, unless the absence of the power of control has been produced by his own default.

This ruling was of vital importance from a legal aspect, for it demanded of the defence that the onus lay upon them to prove the accused to be insane. It is round this point that there have been many legal controversies. Suggestions for amending these rules and instituting others more in keeping with our improved knowledge of the working of the mind and brain have been put forward.

Both the late Lord Birkenhead and the late Mr Justice Avory were of the opinion that an insane man often gave way to impulses with which their delusions had no connection. The late Lord Darling attempted to deal with the matter in a special Bill brought before the House of Lords, but it came to an untimely end.

The McNaughton ruling of over a century ago remains to this day the basis of the law regarding legal insanity.

In 1861 another judgment of the House of Lords made history in that it resulted in such widespread agitation that a new law found its way on to the Statute Book. It was an appeal in the case of Brook *v.* Brook. Arising from the controversy which followed came the passing of the Deceased Wife's Sister Bill of 1907 which legalised the marriage of a man to the sister of his dead wife.

The case originally came before the courts in 1858, but long before this, attempts had been made to establish the validity of such marriages without success. The story told at the hearing of the action is of great interest.

In 1847, the first wife of Mr William Leigh Brook died, leaving a son and daughter. In 1851, the husband took the sister of his dead wife to Altona in Germany and there married her. There were a son and two daughters of this second marriage. In 1855 both the husband and wife died of cholera.

The husband left his property to be divided equally between the five children of both marriages. But before the distribution could be carried out, the son of the second marriage died an infant.

There then arose this legal problem: Who was entitled to the property of this infant child?

In law if the second marriage was valid, then his two sisters of the whole blood would succeed to his real estate. The four remaining brothers and sisters would become entitled to the personalty. On the other hand if the marriage was not valid, then the dead boy and his two sisters were illegitimate and his property would devolve to the Crown, as an illegitimate child, in law, has neither next of kin nor collateral heirs.

It was a fine point to be decided, and when the case came before the Vice-Chancellor he ruled that, as the law of England expressly prohibited such marriages, no resort to the laws of any foreign country could give validity to a contract which English law said was null and void.

In due course an appeal was brought before the ordinary courts and that judgment was upheld. The case was then taken to the House of Lords. After a long and patient hearing the appeal was dismissed.

This confirmed the previous findings in both the lower courts, that the marriage was in fact null and void so that the property of the dead boy became the property of the Crown.

This decision was the signal for an outburst of feeling on every side. From time to time between the years 1872 and 1882, Bills to legalise such marriages were brought before Parliament. Sometimes they were passed by the House of Commons and rejected by the House of Lords. In July 1896, the process was reversed, for in that same year the Lords brought in a Bill which was stopped by the Commons in the August. Eventually, however, a Bill was passed in 1907 making valid the marriage between a man and his dead wife's sister.

Since then there has been another broadening of this issue. In August 1946 the Table in the Book of Common Prayer, prohibiting marriages between certain specified relatives, was revised and approved by Convocation, and, under the Marriage Act of 1949, a man is in law able to marry many of his hitherto ineligible relatives.

Another important ruling concerning a matrimonial case was given by the House of Lords in 1861. It was that of Beamish *v.* Beamish in which a clergyman of that name had performed the wedding ceremony at his own marriage. The validity of the marriage was called into question, and the Lords decided that a clergyman cannot perform a marriage ceremony for himself.

Perhaps one of the most sensational as well as one of the most romantic appeals ever heard in the House of Lords was one that arose out of a verdict given in the Irish Court of Common Pleas.

It was set amid the colourful surroundings of Balaclava, with a beautiful and virtuous woman belonging to the French Sisters of Charity as its heroine; a secret Scotch marriage followed by another in Ireland; the birth of a child, and the alleged desertion of the wife by her husband, who later married another woman, denying the validity of the previous marriages.

The action itself was one brought by a Mr Thelwall who sued Major Yelverton for the price of necessities supplied to Mrs Yelverton, and for money advanced to her. It was this claim which involved the issues that came before the jury, these being whether or not the marriage between the Major and Miss Maria Theresa Longworth was a legal marriage.

In her evidence Miss Longworth described how, after knowing Major Yelverton for years, she chanced to meet him in Constantinople at a time when she was engaged in tending the sick and wounded during the Crimean War. He proposed marriage to her in the little Greek chapel at Balaclava, but she refused him. Later, on her

returning to Edinburgh, he again pressed her to marry him, and she agreed.

The ceremony was a simple one. The bridegroom and his bride read aloud together the marriage service from the Book of Common Prayer; but even then, the wife would not cohabit with her husband because she believed that marriage was a sacrament and should be sanctified by a church service.

They travelled to Ireland, and it was there that they went through a second ceremony at Rostrevor, carried out by a Roman Catholic clergyman. It was a private marriage by special dispensation from the Bishop. Thereafter they lived together as man and wife, travelling about the country, and visiting the Continent from time to time.

Suddenly, without warning, the Major left his wife. When asked for an explanation of his desertion he replied that they were not "properly married". Soon afterwards he married another woman.

The first Mrs Yelverton, who had become a mother, brought an action in the Scottish Court for maintenance. Major Yelverton permitted judgment to be entered by default. Evidence was called regarding the marriages. A member of the Scottish Bar declared that the marriage was valid as the only thing required to constitute marriage in Scotch law was consent. The Rev. D. O'Connell was equally emphatic stating that, according to Roman Catholic rites, the marriage was perfectly legal.

Then the Major was called. He gave a very different version of his courtship and "marriages", and during his ungallant recital there were many interruptions by the public who booed and hissed him. He blatantly stated that when he met Maria in Balaclava he formed the idea of making her his mistress.

"Some of the kindest hearted women in the world are mistresses," he blandly told the court. He related how he was "haunted" by this idea and possessed of a "longing to realise it". It was on board a steamer, he said, that he finally succeeded.

"It was evening—*Ave Maria*," he went on. "It was the hour of prayer. We sat together. I put my arm round her waist and kissed her very much. We were both greatly excited, and it was then I attempted her virtue. I did not succeed then, but later on I did."

The Major added that it was the woman's passion for him which showed that, with the sacrifice of her virtue, she put off all sense of modesty. He swore that it was never his intention to marry her, but that he simply wanted her for his mistress. He denied the Scottish marriage altogether. Regarding the marriage at Rostrevor, he admitted "holding hands" and "taking her for my wife", but, he

went on, "I told the priest that it was for this lady's conscience alone." As he was a member of the Church of England, he insisted he could not be married by a Roman Catholic priest, therefore the Irish ceremony was not a marriage at all.

The jury found that both marriages were valid. So delighted were the crowds which had gathered to hear the verdict that, when Mrs Yelverton appeared, they unharnessed the horses from the carriage which was to take her to her hotel, and amidst a forest of waving handkerchiefs she was drawn in triumph through the streets.

The Major appealed in the Irish courts, but the verdict was upheld. As the deserted woman said afterwards, it would be difficult to believe that "two persons deeply attached to each other, met in a church, knelt down at the altar while the officiating minister performed the marriage service—for the express and absolute purpose of *not* becoming husband and wife."

She then filed suit in the Edinburgh court to have the Scottish marriage declared legal. But neither she nor Yelverton was permitted to give evidence under the then existing law in England, that the actual parties in any action were not competent to do so. The Judge of the First Division of the Court of Session decided against Mrs Yelverton, but on appeal the Judges of the Second Division found in her favour by a majority of two to one.

It was then that the Major took his case to the House of Lords. For 13 days the hearing went on before five Law Lords. Then, while Lord Westbury and Lord Brougham held that the Scotch marriage was legal, the other three Judges took the opposite view, and Major Yelverton gained the day.

The case was sent back for the Edinburgh court to formulate its judgment. In vain the distraught woman begged the Court to let her prove an admission of the marriage by Yelverton to his dying brother, but her plea was refused. Again she appealed to the House of Lords, this time appearing in person to argue her case. Once more she failed, and in 1868, when she again returned to Edinburgh to ask the court to set aside all previous proceedings, the tribunal declared that as Yelverton was a domiciled Irishman the Scottish courts never had any right to entertain the actions.

So Maria Theresa Longworth, as she now became, went out into the world to earn a living by writing novels under her own name. She died in Africa in 1881.

CHAPTER ELEVEN

THE HOUSE OF LORDS (*Contd.*)

NOT all the cases which come before the House of Lords are so romantic or spectacular as that of the Yelverton appeal. Often the appeal is connected with some big commercial undertaking; and then, days and weeks may be taken up by learned and expensive counsel on either side arguing the various points of law involved.

Sometimes, however, they are less prosaic.

In 1883, for example, that inveterate and fiery freethinker, Charles Bradlaugh, stood at the Bar of the House of Lords. Some two years before he had been fined £500 for sitting and voting in the House of Commons without taking the oath. There had been several scenes in the House over his failure to do so, and more than once he had been forcibly expelled from the Chamber. But each time his constituents re-elected him.

Eventually a Mr Clark brought a suit against Bradlaugh with the result that he was fined as stated. Bradlaugh went to the Court of Appeal, which had been instituted a year earlier when the new Law Courts were opened, but lost his case. He then went to the House of Lords where he gained the verdict and a reversal of the previous decisions. In 1886 he took his seat again, this time affirming. Affirmation has ever since been acceptable.

Let us bridge the years till the present century and come to the last trial but one of a Peer by his Peers. This was the trial of Lord Russell in 1901 on a charge of bigamy. There is a record of a trial of a Peer by his Peers having been held soon after the Conquest, but it was not till the time of Magna Carta that the provision which holds to-day was made statutory. It was then put forward by the Barons as a safeguard against the possible tyranny of the King, who held absolute power.

After the Law Courts were transferred to Temple Bar, the few Peers who came to trial in this manner appeared before their noble Judges in the Royal Gallery of the present House of Lords, but with all the old-time pageantry and ceremonial which had been a feature of those previous trials in Westminster Hall.

It was in this Gallery that Earl Russell appeared. It was a most impressive scene, for, in addition to Lord Halsbury, the Lord Chancellor, presiding as Lord High Steward, eleven other Judges sat

to try the Earl. The Archbishop of York and the Bishop of Winchester were also present, while the rest of the space was taken up by Peers and Peeresses to the number of 160, all clad in their picturesque robes.

Earl Russell's offence was largely a technical one. He had married Mabel Edith Scott in 1890 and there had followed much litigation between husband and wife. The Earl went off to America, and from a court in Nevada obtained an order for divorce from his wife. The next day he married one Mollie Cooke. Lady Russell sued for divorce in 1901 on the ground of bigamous adultery, and a decree *nisi* was pronounced. In June of that year the Earl was arrested and charged with bigamy before a Grand Jury at the Old Bailey. The jury found a true Bill, upon which the Recorder at the Old Bailey wrote to the House of Lords informing them of the fact.

On appearing before his Peers, the Earl pleaded Guilty and was sentenced to three months imprisonment. He was afterwards granted a free pardon.

This will be an opportune moment, without dislocating the sequence of events too much, to span the years once more to include the trial before his Peers of Lord de Clifford. He had been committed for trial on a Coroner's warrant for the manslaughter of Douglas George Hopkins, who was killed in a car collision on the Kingston by-pass, outside London, in August 1935.

No other trial of a Peer by his Peers had taken place since that of Earl Russell, and it is most likely that Lord de Clifford's trial will be the last such trial that will ever take place in this country, as it is generally felt, among Peers and lawyers alike, that this mode of administering justice to noblemen is archaic and out of date.

I should mention that it is only if Parliament is sitting that the House of Lords tribunal is composed of all its members who care to attend, with the Lord High Steward presiding. In the event of Parliament not being in session at the time of the trial, then the hearing takes place in the Court of the High Steward, and only the Judges take part. This Court was instituted in the reign of Henry IV, 1399–1413. Parliament not being in session, the Earl of Huntingdon was tried before it on a charge of high treason, and on that occasion he appeared before the Lord Mayor and Justices of London, who found him Guilty. In the early days of this Court of the High Steward, it was left to the latter to select those Peers he wanted to act as Judges, and this practice continued down to the time of William III, 1689–1702, when it was thought wise to prevent the packing of a court by the presiding Judge.

But to return to the trial of Lord de Clifford. I can give a picture of the scene as I beheld it from the seats which had been provided for the Press.

The setting was the Royal Gallery, which had been arranged like a court. It is a spacious room about 140 feet long and 40 feet wide. A temporary throne with a canopy stood at one end on which the King might sit if he desired to attend. In front of this was the seat of the Lord Chancellor, who was the Lord High Steward, while on either side of him were row upon row of crimson chairs.

Before their entry into the Gallery, the Peers gathered in the House of Lords itself, clad in all the gorgeous pageantry of their robes. After prayers had been said, the Clerk of the Parliaments read the Roll of Lords Spiritual and Temporal, each of them answering his name.

Then Norroy King at Arms marshalled the Peers and the Judges who had been summoned, into the Royal Gallery.

In the meantime Lord de Clifford had arrived, being at once handed over to the custody of the Gentleman Usher of the Black Rod. On his entry into the Royal Gallery I saw that he was uncovered, and was wearing no robes. He struck a sombre note amid all the radiance of colour around him.

Norroy and Black Rod approached the Lord High Steward with stately gait. Three times they paused, and three times made low obeisance (called *reverences*) before him; then they handed up the White Staff, the symbol of his office. This ceremony over, the Lord High Steward ordered the Indictment to be read, and Lord de Clifford knelt before the Bar whilst this was done.

Then came the calling of witnesses and the marshalling of evidence.

The late Sir Henry Curtis Bennett, K.C., appeared for Lord de Clifford, and it seemed strange to me, who had seen him so many times in the less exalted atmosphere of the Old Bailey, to hear him using the same forensic arguments that he would have used had his client been of more humble origin.

The evidence over, Peers and Judges filed out in colourful procession to return to the House of Lords, there to carry out the time-honoured formula of deciding their verdict. To each one, beginning with the junior Peer, the Lord High Steward put the same question: "Guilty or Not Guilty?"

As the question was put each Peer rose in his place, and with a hand on his heart declared, "Guilty upon my Honour," or "Not Guilty upon my Honour," whichever was his opinion.

In the case of Lord de Clifford their lordships returned a verdict of

Not Guilty, and so this young and popular Peer was duly acquitted.

Once more legal history was writ large in the House of Lords when, for the first time on record, an appeal in connection with a charge of murder by a commoner was taken there in 1920.

It was a remarkable case in more ways than one, for it was not the man who was the subject of the charge who appealed, but the Crown. And the Crown asked that a conviction on a charge of murder, for which this man had been sentenced to death, and which had been quashed at the Court of Criminal Appeal, a verdict of manslaughter being substituted, should be restored.

Nothing like such an appeal had ever been known before, and it aroused tremendous interest in legal circles. As I was again present when this appeal was heard, I will give you a pen-picture of the hearing. But first, the background to the appeal.

The central figure in this drama was Arthur Beard, a night-watchman in a Hull mill, who in a drunken frenzy had outraged a little girl and placed a hand over her mouth to stifle her cries. Then, sobered by one flash of sanity that darted through his mind, he realised that he was a murderer. The child who had excited his passion lay dead.

There came the police, the inquest, the trial, and that dread moment when he heard sentence of death passed upon him. Beard stood unmoved throughout his trial, little dreaming that in a few short weeks he would figure in a case which was to make legal history.

His counsel decided that there was a case for appeal on purely legal grounds. They went to the Court of Criminal Appeal where it was argued that Beard was so drunk at the time of the crime that he did not know what he was doing. The Court, presided over by the Lord Chief Justice and two other learned Judges, ruled that Beard did not know what he was doing at the vital time. They quashed the conviction for murder, and sentenced him to twenty years penal servitude for manslaughter instead.

An important point of law had been raised. There was some obscurity among legal authorities as to the dividing line between murder and manslaughter in a case of drunkenness. In order to settle the question once and for all, the Crown decided to take the case to the House of Lords.

It was a different picture that was presented, when Beard appeared in that ornate if sombre chamber, from the one I was to see fifteen years later at the trial of Lord de Clifford. There were no peers in gorgeous raiment, nor any of the scores of people who usually

throng the courts when murder is the charge. There were only the eight Law Lords, with the late Lord Birkenhead—Lord Chancellor of that time—presiding in his full-bottomed wig, the other members of the court being in ordinary morning dress.

Between two warders sat Beard, a dejected, overwhelmed, pathetic figure, who showed some signs of revival when at the very outset Lord Birkenhead announced that whatever the outcome of the appeal, the Home Secretary would advise His Majesty that the capital sentence should not be carried out.

The Attorney-General (the late Lord Hewart) outlined the circumstances of the case. I watched Beard struggling to master the unfamiliar words and polished sentences of men who were fighting an issue which will be handed down for all time in English law. I saw him lift his eyes in awe to the stained glass windows on which were emblazoned the figures of England's kings and queens.

Hour after hour, day after day, the legal arguments went on. At long last came the considered judgment of the Court, uttered by the Lord Chancellor—that the conviction of murder be restored.

The Court found that evidence of drunkenness falling short of a proved incapacity of the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected so that he more readily gave way to some violent passion, was not sufficient to rebut the presumption that a man intends the natural consequences of his act.

So Arthur Beard, branded a murderer, departed to carry out the long sentence of twenty years' penal servitude; and yet another landmark in the law land was set up.

One other function of the House of Lords should be mentioned, although it is not connected with its appellate jurisdiction in relation to the lower courts. I refer to what is called the Committee of Privileges. Since 1666 the Lords have never claimed any original civil jurisdiction except in cases of "privilege". It can, however, decide whether or not an ancient peerage shall be revived, and can also determine the validity of the creation of a new peerage by the Crown.

An interesting case arose out of the Sex Disqualification Removal Act of 1919, which left it in some doubt as to whether a peeress in her own right was entitled to sit in the House of Lords. In 1922 Viscountess Rhondda, on behalf of 29 other women who shared this honour with her, went before the Committee of Privileges in the House of Lords to raise the question. All claims of this kind must first be made to the Crown through the Home Secretary, who passes

them on to the Attorney-General. If that gentleman reports favourably, the claim then goes before the Committee of Privileges.

In the case of Viscountess Rhondda, the Committee decided that peeresses in their own right could not sit in the House of Lords.

The following year the Barony of Cromwell was revived. It was a title which had fallen into abeyance for over 400 years. Ralph de Cromwell (no connection with Oliver) owner of Tattershall Castle, was summoned to Parliament by writ in 1375. His grandson, Lord High Treasurer to Henry VI, died in 1455, and the barony fell into abeyance between the daughters of the second lord. Both of them died childless with the result that the title remained in abeyance till revived in 1923 by the King's writ.

Quite recently there has been an echo of a most sensational appeal which came before the Lords in 1924, and which established a ruling that a husband or wife could not give evidence of non-access after marriage, which would result in the bastardisation of a child born in wedlock.

It was a rule laid down by Lord Birkenhead, Viscount Finlay and Lord Dunedin, Lords Sumner and Carson dissenting; all of them were acknowledged experts on law.

The case was that which became famous throughout the world as "The Russell Baby Case". The litigation began in 1921 when the Hon. John Hugo Russell, later Baron Ampthill, petitioned for a divorce on the grounds of the adultery of his wife. He claimed that a child born after their marriage was not his child, as at the vital period he had not "access" to his wife. Mrs Christabel Russell insisted that the child was that of her husband. After a nine days' hearing in July 1922, Lord Merrivale, President of the Divorce Division, dismissed two co-respondents from the case, and the jury disagreed over another man.

Later, there was another hearing before Mr Justice Hill. On this occasion a decree *nisi* was granted to the husband. The wife took the case to the Court of Appeal, but the decision was against her. In 1924 she took the case to the House of Lords, where three of the Judges mentioned above, Lords Birkenhead, Finlay and Dunedin were in favour of the appeal being allowed, Lords Sumner and Carson dissenting.

Lord Birkenhead, giving judgment, said: "The question, if I am right, was whether or not by the law of England evidence could be tendered by a spouse and received by a court with the object of a possible result of bastardising a child of the marriage. . . . I have formed the clear conclusion that such evidence was not receivable,

that it ought not to have been allowed to go to a jury; and that unless there was other evidence proper to go to them, the verdict could not stand."

Lord Finlay was even more emphatic. "It is admitted," he said, "that evidence of non-access by the husband or wife is inadmissible in Peerage cases, in legitimacy cases, and in actions of ejectment for land. To what an extraordinary state would the admission of this evidence in the present case reduce the law of England? The infant may be illegitimate for the purpose of proving adultery; but legitimate for the purpose of succeeding to property or a title."

Lords Sumner and Carson were of opinion that the evidence was rightly admitted.

Quite recently, however, there has been a movement in legal circles to abolish the above ruling. The Lord Chancellor, Viscount Jowitt, has accepted an amendment to the Law Reform (Miscellaneous Provisions) Bill. This movement has arisen from the fact that during the war hundreds of children were born to the wives of Servicemen abroad. The period when they were absent from this country was such that they could not be the fathers of these children.

Under the Russell Ruling, none of these men seeking a divorce could give evidence of their absence abroad and thus prove non-access at the material time when the child must have been conceived. If the new amendment becomes law it will be possible for the husband to give evidence showing that a particular child is not legitimate owing to the non-access of one spouse to the other at the time of conception.

I will now touch on an appeal in somewhat lighter vein, yet illustrating the variety of legal questions which the learned law lords have to decide.

It was in the year 1935 that an action for damages was brought in the King's Bench Court by Mr Herbert M. Stretch of Cookham Dean, Surrey, against Alexander Frederick Churchill Sim. The plaintiff alleged that the defendant had "enticed" a housemaid named Saville from his employment. When the case opened, counsel for Mr Stretch quoted, "Thou shalt not covet thy neighbours' maid-servant."

The jury awarded the plaintiff £25 against Mr Sim for the enticement of Miss Saville, and £250 for an alleged libel that was contained in a telegram which read: "*Edith has resumed her service with us to-day, please send her possessions and the money you borrowed; also her wages to Old Barton, Sim.*"

All the subsequent legal proceedings centred round whether the

telegram was libellous or not. Mr Sim appealed to the Court of Appeal. He did not challenge the £25 award for enticing, but asked Lord Justices Roche, Greer and Slesser to say that no libel was contained in the telegram. His appeal was dismissed. Mr Sim thereupon took the case to the House of Lords where this same issue was argued before Lord Atkin, Lord Russell of Killowen, and Lord Macmillan.

Lord Atkin in delivering judgment remarked: "It appears to me that the alleged innuendo is fantastic. . . . I am at a loss to understand why a person's character should be lowered in anyone's estimation if he or she has borrowed from a domestic servant."

His lordship went on to say: "The truth of the case is that the whole matter is a trumpery affair and that the alleged libel would probably never have been heard of but for the wounded feelings caused by the improper enticement."

The order of the Court of Appeal and the verdict and judgment at the trial on the issue of libel were therefore set aside; which only goes to show that a case is never lost until it has been before the House of Lords.

As I have shown, not all the appeals which come before the House of Lords are those connected with people of rank or wealth. No more dramatic illustration of this ever occurred than when a Somerset farm labourer, who had been sentenced to death for the murder of his 17-year-old wife, made a desperate bid for life before this august assembly.

The man was 21-year-old Richard Woolmington. Twice he stood on trial for his life. On the first occasion the jury disagreed. He was less fortunate the second time, for he was found Guilty but with a strong recommendation to mercy. He was sentenced to death.

In March 1935, this youth appealed to the Court of Criminal Appeal on the grounds that the Judge at his trial had misdirected the jury on the question of "onus of proof". The appeal was dismissed, and in ordinary circumstances young Woolmington would have gone to the gallows. But again some doubt was felt regarding the summing-up, and the Home Secretary intervened.

Up to this point the defence of the young man had been conducted under the Poor Prisoner's Defence Act of 1903. Solicitors and counsel had been provided for him under that Act free of charge, at the expense of the State. Both at his trial and subsequent appeal eminent counsel defended him. But even now, after his appeal had been dismissed, those who had defended him at fees which they would normally have scoffed at, were not satisfied. There was still

the House of Lords. Application was made to the Attorney-General, Sir Thomas Inskip, who granted his *fiat* authorising an appeal to that body. Soon afterwards, Reginald Woolmington stood before the Bar of the House of Lords, with all its expensive machinery set in motion to ensure that justice should be well and truly done to one of the country's humblest subjects.

I can see him now, a neatly-dressed figure gazing down from his seat in the Members' Gallery, straining his ears to catch the arguments of his learned counsel, the late Sir T. J. O'Connor, K.C., as he eloquently demanded his client's acquittal on a point of law.

Five Law Lords with Viscount Sankey, the Lord Chancellor, presiding, listened to this momentous fight for the life of a man who was scarcely visible to them from where they were sitting. They were more like business men than Law Lords, in their morning suits without wigs or gowns.

Sir T. J. O'Connor, afterwards Solicitor-General, went back into the archives of legal history for his arguments, back to the years 995–1035, in the reign of King Canute. Quotations from law books of past ages; extracts from the summing up of the trial Judge together with extracts from the judgment of the Court of Criminal Appeal. And then . . . the judgment of this final court of all.

"Throughout the web of English criminal law," said the Lord Chancellor, "one golden thread is always to be seen. That it is the duty of the prosecution to prove the prisoner's guilt subject to the defence of insanity and also to any statutory exception. When dealing with a murder case the Crown must prove:

(*a*) Death as the result of a voluntary act of the accused, and

(*b*) Malice of the accused."

This the prosecution had failed to do, declared Lord Sankey, and the appeal would be allowed.

There was no sentiment in this finding, nothing but the hard application of the law, and the stern desire to see that justice be done.

So young Woolmington strode from that court a free man purged of any suggestion of guilt, while yet another chapter was added to the law books.

Not all the cases which come before this tribunal are so momentous. In 1947 a police court case which involved a sum of £34 eventually led to the Old Bailey, Court of Criminal Appeal, King's Bench Division, Court of Appeal, and House of Lords.

It began when Mr Harold Christopher Smith, a builder of Edmonton, in North London, brought a charge of conspiracy against

Captain Robert Herniman, a timber merchant of Fulham. The alleged conspiracy consisted of obtaining the sum of £34 in the supply and delivery of timber. From the police court Captain Herniman was committed for trial at the Old Bailey. There, a jury found him guilty, and he was sentenced to twelve months' imprisonment. He appealed to the Court of Criminal Appeal, and the conviction was quashed. The Captain thereupon brought an action for damages against Mr Smith for malicious prosecution and wrongful imprisonment, and was awarded £5,000.

It was then the turn of Mr Smith to appeal against this award, and he applied to the Court of Appeal, which deals with civil actions. He was successful, it being held that there was no evidence which would justify the trial Judge in leaving certain questions to the jury. Nor could the appeal Judges find that there was any absence of "reasonable and probable" cause for bringing a prosecution.

That was the issue when Captain Herniman appeared before the House of Lords.

Lord Atkin, who presided, with Lords Russell of Killowen, Macmillan, Maugham and Roche, opened his judgment by saying that "no question any longer remained as to the plaintiff's innocence". After an analysis of the evidence which had been adduced at the various courts, and an elucidation of the law on the subject, he concluded: "It was not required of any prosecutor that he must have tested every possible relevant fact before he took action. His duty was not to ascertain whether there was a defence, but whether there was reasonable and probable cause for a prosecution. . . . He thought that the appeal should be dismissed."

So that this case which had begun over a matter of £34, ended in legal costs which must have run into some thousands of pounds.

Of recent years there have been many unusual matrimonial issues decided by the House of Lords.

In the Matrimonial Causes Act of 1937, it was laid down that "A marriage shall be voidable on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage."

In 1948 there occurred the case of Baxter *v.* Baxter in which the husband asked for a nullity decree alleging that his wife refused to consummate the marriage. Under the 1937 Act, the husband had to prove that she had wilfully refused consummation. The trial Judge, however, found that the husband had acquiesced in her attitude in refusing to have a child, and that the non-consummation was due rather to the husband's own action in acceding to his wife's request

that there should be no intercourse without contraceptives.

Mr Baxter's suit was dismissed. He then went to the Court of Appeal, where the judgment of the lower court was upheld. The Court stated that there could be no wilful refusal until the husband had at least brought to bear "such tact, persuasion and encouragement as an ordinary husband would use in the circumstances. . . . A reluctant acquiescence is nevertheless an acquiescence", the Judge declared.

The case went to the Lords, where it was found that there was a marriage, despite the fact that contraceptives had always been used.

That same year Mr Justice Finnemore granted the wife a decree *nisi* on the grounds of her husband's desertion.

An even more poignant case was decided after proceedings had extended over four years, when, in 1950, Mr Charles Preston-Jones, a shipping clerk of Hampstead, London, appealed to the Lords in connection with a petition for divorce against his wife Mrs Bertha Preston-Jones.

Newspaper headlines referred to it as "The 360 Day Baby Case", for the whole question to be decided was whether or not it was possible for Mr Preston-Jones to be the father of a child born to his wife while he was serving overseas at a vital period.

The story opens in 1947 when the husband petitioned for a divorce at Chester Assizes, and failed. In July 1948 a new trial was ordered by the Court of Appeal. In March 1949 another petition for divorce was dismissed in the London Divorce Court. In July of that year the Court of Appeal decided there should be a third trial by a High Court Judge, and leave was given to appeal to the House of Lords. In November 1950 the appeal came on before five law lords with two K.C.'s in full-bottomed wigs and three junior barristers representing the parties on either side.

In opening the case for Mr Preston-Jones, Sir Godfrey Russell Vick, K.C., remarked that "this case has startled the medical world in these days of advanced science." He added, "This is an appeal where the mother, respondent in a divorce suit, was the mother of a male child who, according to the facts as now put forward, was a 360-day baby."

That was the question which the law lords had to decide: whether a "pregnancy of 360 days is so impossibly long as to show that misconduct had been committed?"

The husband's case was that he was abroad at the time the child must have been conceived. The wife answered that the child was the lawful issue of the marriage.

In the Court of Appeal it was stated that the husband was not in the country from August 17, 1945, to February 9, 1946, and that the child must have been conceived in November 1945.

Lord Simonds, giving judgment in the House of Lords said: "It would appear a fantastic suggestion to any ordinary man and woman that a normal child could be born 360 days after the last intercourse. It had been held that periods of 331, 346 and even 349 days were not impossible. I must reluctantly come to the conclusion that an additional period of 11 days, making 360 days in all, ought not to be regarded as making the vital difference so that the Court can, without any further evidence, regard adulterous intercourse as proved beyond all reasonable doubt."

Lord Oaksey dissented from this view arguing that the onus on the husband was as heavy as that resting on the prosecution in a criminal prosecution. He felt that the husband or the Court should have called medical evidence to prove that the child could not be the child of the husband.

In February 1951, Mr Preston-Jones was granted a decree *nisi* against his wife.

CHAPTER TWELVE

QUARTER SESSIONS AND POLICE COURTS

I AM combining the story of the Court of Quarter Sessions with that of the Police Court because of the similarity of the parts they have played in the evolution of England's legal system.

In the counties, the Courts of Quarter Sessions and the Police Courts (in legal terminology Courts of Summary Jurisdiction), are both comprised of Justices of the Peace, more often referred to as a Bench of Magistrates; for that in fact is what they are, magistrates. In certain big towns, cities and boroughs, Quarter Sessions are presided over by a Recorder, and sometimes a Judge, who is a paid officer and must be a lawyer of over five years' standing. Police Courts are presided over by Stipendiary (paid) Magistrates.

Police Courts as such—as definite buildings where prisoners can be tried for petty offences and *summarily* dealt with—are of much later origin than Quarter Sessions, and for this reason, to maintain as far as possible the sequence of my story, I propose to deal with the Quarter Sessions first.

Stow, the great historian, says that Justices of the Peace were first instituted in 1076 by William I, but, as I have shown in my chapter on the Sheriff's Court, more recent research gives a later date for the origin of this honorary office as we know it to-day.

Mr Leo Page, in his *Justice of the Peace*, says:

> "The origins of our existing system (of J.P.s as they are usually called) can be discerned in 1195, in the appointment in that year by Archbishop Hubert, of knights for the special purpose of swearing in men to assist the Sheriff in the maintenance of order. However this may be, it is incontestable that rather more than half a century later, in 1264, Simon de Montfort appointed *Custodes Pacis*—Keepers of the Peace—in every county, to serve 'until the King and Barons shall determine otherwise'. The *Custodes Pacis* of 1264 was a Justice of the Peace; soon to be known by that name, which, seven hundred years later, he still bears."

In the year 1316 the *Custodes* were given powers to arrest suspects and institute inquiries into felonies; thirteen years later, in 1329, powers of punishment were conferred upon them.

It was in 1327, however, that by an Act of Edward III a number of "good and lawful men" were assigned to "keep the peace" in every county. By 1346 separate commissions were provided for each county, and in 1388 the number of Justices in each county was fixed at six. They were instructed to sit four times a year, hence the origin of the term Quarter Sessions. Later, the number of Justices could be increased as desired.

They were empowered to examine and punish lawbreakers, and by an Act of 1360, Edward III authorised them to determine all manner of crimes. They were men of good position, but, as we have seen all through the history of the courts, these "good and lawful men" did not always prove to be either good or lawful. They gave harsh judgments and did not hesitate to imprison a convicted person in the dungeons of their own castles instead of in the common gaols provided for that purpose. In the reign of Henry IV, 1399–1413, they were ordered by Statute to use common gaols. Later, in the reign of Henry VII, 1485–1509, a Statute came into force complaining that the Justices were both "negligent and misdemeaning".

These then were the men who administered justice in the local courts and at Quarter Sessions; the jurisdiction of the Justices which rested upon these Statutes continued until the year 1842. In that year, the fifth of Victoria's reign, an Act was passed which removed the more serious crimes such as murder, treason, capital felony and a few others from the jurisdiction of the Quarter Sessions.

Sir Henry Slesser, in *The Law*, states that "Borough Quarter Sessions appear even earlier than the County ones—that of the City of London existed in the reign of Henry I, 1100–1135. In 1834 some eighty-five boroughs had separate Quarter Sessions, most of them presided over by a Recorder."

The procedure at Quarter Sessions is the same as that which prevails at Assizes. The Recorder sits with a jury to try all indictable offences. These are the offences which cannot be finally dealt with in a Police Court (or Petty Sessions as they are termed in the counties) although all charges must go through the Police Court first, as we shall see later.

Quarter Sessions also hear appeals arising out of convictions at Petty Sessions (the county equivalent of the Police Court) and appeals in relation to Licensing and Rating.

Once more we find London a little world on its own in the legal scheme of things so far as Quarter Sessions are concerned. In the County of London the Quarter Sessions are held at the Sessions House, Newington Butts, south of the Thames. There, all cases

sent for trial at the Quarter Sessions, from those courts in London which come under the Metropolitan Police Act of 1839, are heard and dealt with. There, too, all appeals from the Metropolitan Police Courts are heard. These Sessions are held every fortnight, in contrast to the three-monthly Sessions held in the counties.

The City of London Quarter Sessions are held at the Old Bailey, and it is here that all cases sent for trial from the two City Police Courts—the Guildhall and Mansion House—are finally disposed of. The Quarter Sessions are quite apart from the Old Bailey sittings as an Assize Court.

It may be rather confusing to mention that the Middlesex County Quarter Sessions are also held in London at the Court House at Westminster, opposite the famous Abbey, and within a stone's throw of the Houses of Parliament. This is largely a matter of convenience, as some of the Middlesex police courts—Tottenham and Hendon, to mention two—are in London. They have no magistrates as the Metropolitan Police Courts have, but are presided over by Justices of the Peace.

I will give an example or two of the type of cases that are to be heard at Quarter Sessions, but these need only be few in number, because of their similarity to those in the Assize Courts, although usually they are less serious.

On Christmas Eve, 1925, a pretty young servant girl met a charming but rather elderly gentleman on the sea front at Brighton. He was a kindly-looking soul, well-dressed and so polite; the girl was greatly impressed. His name was Vincent, he told her, and he was a racehorse trainer at Lewes, where he had an elaborate house and a staff of servants. He was staying at the Grand Hotel, he said, and invited the girl to have tea with him there.

He mentioned casually that he had about £8,000 in the bank, and then, having explained that he was moving his racing stables from Sussex to Ilsley, near Reading, in Berkshire, proposed marriage, as he felt sure that his companion would make him a good wife and housekeeper. The girl gave up her situation in view of her marriage, withdrew £70 from the bank which she handed to her bridegroom-to-be, and that was the last she saw of him until his arrest more than a year later.

In April, 1927, Walter Vincent, as he called himself, appeared before the Recorder at Brighton Quarter Sessions. His age was given as 62, and, as was revealed at his trial, from the year 1878, when he was sent to an industrial school for three years for stealing money, he had been convicted on nineteen other occasions for crimes ranging

from theft to robbery with violence. His sentences had varied from three months to three years.

I was present at his trial on this occasion, and marvelled at the calm effrontery with which he challenged the three jury women who had been called.

"I object to ladies on the jury," he observed, "because this is a charge of breach of promise."

It was nothing of the kind, of course, for breach of promise is a civil action. Vincent was charged with false pretences. He was glib and plausible both in his cross-examination of the unhappy girl as well as in his plea to the jury which he made from the dock. He was very careful not to go into the witness box and give evidence on oath, because he would then have had to submit to cross-examination by Mr John Flowers, K.C., himself Recorder at Southend Quarter Sessions.

But the jury, who of course knew nothing of his previous criminal record, were not hoodwinked by his whining defence, and found him guilty. He was sent to prison for six months with hard labour.

I mention this case because not very long ago in 1945 Vincent, whose real name is John Thomas Hawtin, came up before the Recorder at Liverpool Quarter Sessions charged with obtaining two sums of £65 and £200 by means of the confidence trick. This time he was in the name of Walter Blake, and gave his age as 65. The police had no difficulty in identifying Blake as the man Hawtin who, on this occasion impressed his victims by representing himself as "Joe the Jockey", with special inside information regarding winners on the turf.

Blake (or Hawtin) made no defence this time, and pleaded guilty to both charges. There was a grin on his face as he then invited the Recorder to "Let bygones be bygones; if you give me time I will repay."

"I will give you that," retorted the Recorder, and there was a howl of laughter from the court, in which "Joe" joined. He was sentenced to eighteen months' hard labour.

Another persistent crook whom I saw often before Recorders in various parts of the country, was one Delphine Crawford-Smith. When she appeared at the Old Bailey in 1942, charged with robbing an aged couple of their life savings, the Judge there referred to her as a "woman with a heart of stone".

The last time I saw her was in 1946 when she appeared at Kingston Quarter Sessions, where Judge Tudor Rees told her she was "a disgrace to her sex, a public nuisance and a menace". To mark his

disapproval of her long life of crime, he sentenced Delphine to four years' penal servitude.

A tiny little person, pathetic in appearance, she could scarcely see over the ledge of the dock. She was also so deaf that she had to be taken to the rostrum of the Clerk of the Court to hear sentence passed upon her.

Hawtin was a novice to Delphine in the number of previous convictions, for she had 37. And as her age in 1946 was only 51, and she was first convicted in 1911 at the age of 16, 37 convictions in a space of 35 years was not a bad average.

Not all cases have such sorry sequels as these. In 1946, a young man named Richard Eastwood was charged with assaulting his fiancée, a young widow, the charge having been reduced from one of malicious wounding.

The case came before Mr John Flowers, K.C., the Recorder at Southend Quarter Sessions, who bound over young Eastwood for two years on condition that he did not associate in any way with his sweetheart.

Nine months later Mr Eastwood came up before the same court charged this time with a breach of his recognisance. It was stated that he had been seen at the widow's home, and that they were discussing marriage.

The widow was called into the witness box to give evidence on behalf of Eastwood, and told the Recorder that it was her fault that Eastwood had come down from Coventry to see her.

"We are very fond of each other," she said, "and we have patched things up. I am quite willing to marry Richard, and he is also agreeable."

It is no part of the law to interfere with romance, so Mr Flowers showed discretion in amending the order under which the lover had been bound over.

"I have never had a case like this before," he said, looking a trifled puzzled. "An order of this court makes it impossible for this man to associate with the lady he is going to marry, which is a bit awkward."

Then turning to Eastwood he continued: "I am not going to prevent you marrying this lady. The order will be varied by the deletion of the clause that you must not associate with her, but you are still bound over to be of good behaviour."

On occasions, too, the Court of Quarter Sessions has to deal with trials founded on laws that go right back into the past. In 1947, for instance, a man was acquitted at Huddersfield on a charge of

misprision of a felony. It was stated in court that this was an ancient crime meaning concealment of guilty knowledge, which had only been used once during the last 180 years. In fact the offence goes back to the reign of Edward I when it was more particularly directed against Sheriffs and Coroners who might have failed in bringing a miscreant to justice, or showed some special consideration to a prisoner. The law is that anybody who sees another person commit a felony without trying to apprehend him and bring him to justice is guilty of misprision, and liable to fine and imprisonment. If a person knows of some felony that has been committed, and attempts to conceal it so that the criminal is saved from prosecution, he is guilty of the same offence.

In the case at Huddersfield, a motor driver's mate of Bradford accepted 20 cigarettes and a meal from his driver after the latter had sold a case of jam which he had previously stolen from their employers.

At the Quarter Sessions it was revealed that, a month before, the driver had been fined £20 when he pleaded guilty to the theft. For the defence it was submitted that in order to have committed misprision, the prisoner would have had to *see* his driver commit a felony; and, as he had never left the cab of the lorry, he was unaware that anything unlawful had transpired.

The jury took this same view; having heard the evidence they stopped the case and the prisoner was at once discharged. So ended happily the first trial of misprision to take place in England for 180 years.

I mentioned that appeals are also heard at Quarter Sessions, and the sort of case that comes before the Bench can be gathered from an appeal which was dealt with at Dover in 1950.

A fine of £20,000 and a sentence of 18 months' imprisonment was passed on Gino Pezzani for the attempted evasion of Customs duties on 3,487 watches which had been smuggled into the country. Pezzani pleaded guilty, so could appeal only against sentence and not against conviction. At the same time, another man, Guy Brodart, was fined £10,000 and 12 months' imprisonment for a similar offence.

After hearing arguments for counsel in both cases, to the effect that both fines and sentences were too heavy, the Recorder reduced the fine of Pezzani to £100, and his sentence to 15 months' imprisonment.

Brodart's fine was reduced to £100, but the sentence was increased to 18 months.

Now let us turn from Quarter Sessions to the Police Court.

In these days, when there are some 120 separate and independent police forces in England and Wales alone, it is difficult to imagine a time when there was no body of highly-trained and impressively-uniformed men whose special duty consisted of maintaining law and order, preventing and detecting crime, and arresting offenders.

Yet there have been police systems of one kind or another for over a thousand years. Primitive in character they may have been, and not highly organised. But still, a police system in accord with the needs of the time. One has to remember that the country was thickly wooded, and that the forests made it easy for robbers and thieves, and outlaws of all kinds, to escape from the scene of their crimes, and lay low until they embarked on their next exploit. Even in those days, when labour was poorly recompensed, there were those who found that crime paid, and that honesty, although undoubtedly the best policy was not so easy or remunerative as crime.

In Ine's time, 688–726, on the advice of his bishops and wise men, he laid down the law that "if a far-coming man or a stranger, journey through a wood out of the highway, and neither shout nor blow his horn, he is to be held for a thief, either to be slain or to be redeemed."

Even at that early period there was a system of policing which gradually developed. When, for instance, there arose the division of communities into the Hundreds, the area of police operations was, more or less, the equivalent of our rural districts and parishes to-day. Then came what was called the *Hutesium* or Hue and Cry which was the pursuit of a felon or offender with "loud outcries or clamour".

It was the law of the land that a person robbed or injured must pursue and capture the culprit. He was also bound to raise the hue and cry under pain of imprisonment. All the other inhabitants of the hundred had to drop whatever they were doing and join in the hunt.

Bracton (or Bratton) 1245–1268 in *De Corona* relates how the knights and other inhabitants of the hundred, shall, on hearing the *Hutesium*, "follow with their household and the men of their land." He goes on to say:

"Let them follow the track to the boundary of their land, and show it to the lord of the adjoining land so that pursuit may be made from land to land till the malefactors are captured."

It must have been a most awe-inspiring din for it was carried out "with horn and with voice from hundred to hundred, from city to city."

It must also have been no joke to down tools and leave the field

one was tilling to go chasing after a felon, blowing a horn and shouting at the top of one's voice. In due course it became so irksome that members of the hundreds decided to appoint a special inhabitant to carry out this duty for a specified time, usually twelve months.

J. M. Hart in *The British Police* states that these worthies were first named "constables" in Norman times. As their duties became more onerous and complex they found it increasingly difficult to carry out these duties properly and "took to paying deputies to do the job for them", as Mr Hart puts it. Thus we begin to see the development of the paid policeman.

Meanwhile, in the larger towns and cities, another system had been developing—a system known as *Watch and Ward* which made all male inhabitants liable to serve their turn on the watch without payment.

These men were not constables. They simply provided a supplementary service. The *watch* referred to watching and guarding by night; the *ward* signified watching, guarding and protecting by day.

The watch and ward, however, became as corrupt as the parish constables, and it was clear that the majority of them, at any rate, were in league with the criminals of that day. Highwaymen and pickpockets stalked the streets. Violence reigned supreme and people were held up and robbed with impunity, particularly in London, which was a warren of narrow alleyways inhabited by half-starved slum dwellers who, in desperation, turned to crime.

Strenuous efforts were made to combat the villainy that went on, but it would take up far too much time to enumerate in detail all the moves that were made in the war against crime. The work of the Bow Street Runners, the efforts of Sir Robert Peel to originate an effective police system, eventually resulted in the passing of the Metropolitan *Police Act* of 1829, which was really the beginning of the police force as we know it to-day.

As we have seen already, Justices of the Peace are among the oldest administrating bodies of the Law. As the legal pattern was formed, as a police force was created, the Justices of the Peace carried out their unpaid duties in the counties and the towns, in Petty Sessions and Quarter Sessions alike. The Petty Sessions sat frequently dealing primarily with non-indictable offences. Their powers of jurisdiction became more clearly defined, being derived from Acts of Parliament ranging from the Summary Jurisdiction Act of 1848 to the Criminal Justice Act of 1948. As Hanbury says in *English Courts of Law*: "They have three important pieces of civil jurisdiction, namely, licensing of premises for the sale of alcohol,

proceedings with regard to judicial separation and affiliation, and small ejectment cases. Their criminal work, which is more bulky, consists mainly of the trial of the vast mass of non-indictable crimes. . . . Under the Summary Jurisdiction Acts, 1879 and 1899, they can also try certain indictable offences. This matter is too detailed for exhaustive description.''

Some of the very minor offences can be dealt with by one Justice sitting alone, but the more serious charges must be heard by two or more Justices.

Apart from Justices of the Peace there arose another type of Magistrate, the Stipendiary, who under the Municipal Corporations Act of 1835 could be appointed by a municipal borough, and the Metropolitan Magistrates of London, who came into existence under the Metropolitan Act of 1829.

They must be recruited from barristers of not less than seven years' practice at the Bar. Their powers are more extensive than the Justices of the Peace in so far as one of them can do alone whatever is authorised by one or more justices under the Indictable Offences Act of 1848 and subsequent Acts.

Early in the 19th century it was usual for an accused person to be brought before one or two Justices of the Peace according to the seriousness of his crime. He was often tried in a private residence. If it was a petty offence, then he would be dealt with summarily. If the charge was of a more serious nature, the Justices, after hearing the evidence, would, if they thought a *prima facie* case had been established, commit the accused to Quarter Sessions or Assizes, as the case might be, there to stand his trial by a jury.

Police offices, but not police courts, were established in the 18th century. In London, at Bow Street, the police office system was founded by De Veil. He held *court*, as it were, in his own *office* at Bow Street. The authorities decided that it might not be a bad thing to have a paid Justice sitting permanently at Bow Street to deal with crime in the very heart of the city.

De Veil was succeeded by Henry Fielding, the novelist, who had been trained as a barrister. There were no fixed times of business in those days, and for sixteen hours, and long after midnight, he would sit in his office, trying prisoners. His health failed and his half-brother, Sir John Fielding, replaced him. Sir John, totally blind, but able to carry out his duties with ruthless efficiency, was the founder of the Bow Street Runners, the predecessors of the Metropolitan Police.

So successful was the Office at Bow Street, that in 1792 the

Middlesex Justices Act resulted in the appointment of seven such Offices with three paid Magistrates and six paid constables. It was not until the Act of 1848, however, that it was laid down that Magistrates must sit at a regular Court House.

With this brief outline of the growth of the police court system we will go on to examine the sort of case that is heard there. Every type of offence from riding a bicycle without a light to murder, from traffic offences to high treason, have their first hearing in the police court.

I have sat in many police courts during my career as a crime reporter, and have watched the procession of "cases" as they have been ushered into the dock, or, where they have been summoned to appear in connection with a non-criminal breach of the law, seen them stand in front of the dock. I have seen the drunks and prostitutes fined with speed and precision. I have marvelled at the patience and human understanding displayed by the Justices or Magistrates in unravelling what is often a tangled web of evidence. I have also admired the wisdom and humanity with which they have dealt with an offender.

I have been present at scenes both grave and gay. I remember an amusing incident in 1939 when that fine example of magisterial forthrightness, Mr Claude Mullins, now retired, was holding his court in the one time dispensary of a doctor's house while his own South-Western Police Court was being rebuilt.

There was the usual collection of "drunks and disorderlies" with a few more serious charges including petty larceny.

Mr Mullins presided with stoic calm. But one of the prisoners who was ushered into the improvised dock was so confused by his surroundings that he turned towards that part of the court which had been railed off for the public when called upon to plead, and uttered a definite "Not Guilty" to the half-a-dozen men who had sought refuge from the cold March winds outside.

"You are looking the wrong way," Mr Mullins rapped out, but the prisoner still addressed the Bench of Public until a police officer turned him round.

Years before, in 1915, I had watched Trebitch Lincoln, the glib traitor of the First World War, when he stood in the dock at Bow Street charged with forgery. He was later sentenced to three years' penal servitude at the Old Bailey. Eleven years later, in 1926, I saw his son, John, at Trowbridge Police Court, committed for trial at the Wiltshire Assizes on a charge of murdering a brewer's traveller. He was there sentenced to death.

The rules of evidence in a police court are governed by precisely the same rules that apply to all courts of law, with the exception of the Coroner's Court as I have already pointed out.

No better example of the rigidity with which they are regarded by our magistrates can be found than a case which came before Mr Frank Powell at Clerkenwell Police Court, and which has been so beautifully described by my colleague J. A. Jones in one of those delightful vignettes of the London courts which are so popular a daily feature of the London *Evening News*.

It concerned a business man charged with being drunk. A constable saw him counting some money outside a cinema, and noticed that he let one of the coins slip helplessly through his fingers. He saw the man stagger and concluded that he was drunk.

I am going to quote Mr Jones, who opened his pen-picture of the scene in court with the query:

> Can you stand on one leg? Can you answer questions intelligently? Can you stoop down and pick up a penny from the ground? If you can do all these things with ease and nonchalance, then you are a citizen of sober and righteous nature, fit to look the whole world in the face.

Mr Powell was interested in the coin-dropping episode. He mentioned that the doctor at a police station often dropped coins on the floor when testing a man for drunkenness, to see if the man could pick them up without falling headlong. Then he asked if the man had been seen by a doctor. The constable replied that he had and a certificate was attached to the charge sheet. Let Mr Jones now take up the story of the dialogue which followed.

> Was the doctor present in court? No he was not. 'A pity,' said Mr Powell. 'I'm not allowed to look at the certificate unless the doctor is here to swear to it'. Mr Powell tried to find a way round the doctor's absence. 'Were you present when the doctor examined this man?' he asked. 'No, sir.' 'That's that then.'
>
> Mr Powell passed for the moment from the subject of the tantalisingly unread certificate and invited the business man to defend his sobriety in the witness box, and the business man walked from the dock with all the dignity of striped trousers.

After a few questions as to how much drink the accused had taken the night before, and hearing that it was something like four or five

pints, Mr Powell suddenly bethought him that he might gain some indication of the contents of the doctor's report from the man himself. The man agreed he had been examined by the doctor.

> "Did he give you any verdict?"
>
> "Not to me, sir—not a word," said the business man. "He ask edme various questions which I think I answered intelligently. The only thing I couldn't do was to stand on one leg: But when it was all over he didn't tell me what he thought."
>
> So the doctor's certificate was beyond reach of the legal arm of Mr Powell. . . .

I am sure Mr Jones will forgive me for quoting him at such length, but he has so succinctly summarised the infinite care that magistrates take to ensure that they make no breach of those iron rules of evidence which might prejudice the trial of a prisoner.

The climax of this case will show you what I mean. Mr Powell remarked that as there was a doubt about the case he would dismiss the accused. He *then* asked to see the doctor's report. The clerk of the court handed it up to him. He read it and gave an ironical laugh.

> 'Apparently the doctor doesn't agree with me,' he said. 'But the case is over and that's that.'

Had Mr Powell seen that certificate before coming to any decision there can be little doubt that he would have found the man guilty, and he would have been punshied accordingly.

All sorts of little points have to be decided by a magistrate. When, for instance, is a wife not a wife? It was a point raised before the Bench at Birmingham when a railway employee, Sidney Spencer Eyre, was accused of fraud. He was said to have obtained free railway tickets by falsely representing that they were for his wife.

Prosecuting solicitor alleged that the accused was separated from his wife and had been living with another woman for six years. He had said, in a statement to the police: "I thought I was entitled to the tickets for the woman I am living with. She is my housekeeper and has changed her name to Eyre."

Mr T. R. Whittingham, who appeared for the defence, pointed out that there was no mention of the words "lawful wife" on the application form which Eyre filled up. He then produced an Anglo-Saxon Dictionary, from which he quoted the definition of "wife" as being "Woman, female or lady" and pointed out that it did not mention marriage. He also drew attention to the fact that another

dictionary described a wife as "the mistress of the household".

"There is no offence unless the Railway Executive uses the words 'lawful wife' on its application form," said Mr Whittingham.

The Justices of the Peace said they must have a fortnight to consider their decision on this point. At the end of that time they stated "they found as a fact that a wife as we regard the word to-day is a wife by marriage and not a mistress. But, as Eyre had been living with the woman for many years, and regarded her as his wife, children having been born to them, there could be no question of false pretences, and the case would be dismissed."

Very often, too, Justices and Stipendiary magistrates alike are called upon to refer back to very ancient laws before passing judgment.

In 1950 Thomas Bell was bound over at Sunderland on a "Peeping Tom" charge; at least that is how it was headlined in the newspapers. He was in fact charged under an old Act of 1361, on a police complaint that his conduct was "likely to cause a breach or blemish of the peace".

It was alleged that he was looking into several lighted windows where "women are in the habit of undressing in the kitchen before going to bed".

Mr William Hanna, who defended the accused, pointed out that the Act under which Bell stood charged was passed to "prevent soldiers roaming the countryside from committing breaches of the peace." He added that his client had committed no offence under this Act.

Sometimes a magistrate is called on to decide whether there can be a marriage.

When James Alfred Hewitt appealed before the Bench at Bromley, Kent, for permission to marry, it was said that he had been called up for the Army and was due to report the next day.

This 18-year-old youth was appealing for permission to marry Betty Bonn, who was a year older.

"The marriage allowance will help us to pay for a home while I am in the Army," suggested James hopefully. He had the written consent of his father, he added; but his mother, who was present in court, opposed the marriage on the grounds that her son was somewhat irresponsible. The Bench refused permission.

You will see, therefore, the variety which comes before a magistrate, and by way of illustrating the wisdom they have to reveal on occasions I will mention a case which came before the Bench of Magistrates at Salisbury.

Two men, Michael Roland James West, and William Henry Wickham, were applying to the magistrates to decide the ownership of certain monies and articles then in possession of the police.

It was stated that West had been bound over for demanding money from Mr Wickham. A solicitor for West said that a balance sheet showed £1,750 as the amount West had obtained from Mr Wickham by blackmail. On the other side there was £400 in the Post Office, £500 in the bank, and £451 4s 9d in cash in the hands of the police. West had also bought a camera and accessories for £237 10s, a photographic enlarger for £64, a car for £150 and a boat for £60. Thus there were assets of £112 over and above what West was said to have obtained from blackmailing.

After consultation together the Justices decided that certain articles claimed by West should go to him; the rest, including the car, boat and camera, must be sold by the police; £50 of the proceeds must go to the Court poor box and the rest to the Prisoners' Aid Society. Regarding the other money they made no order. Mr Miles Carter for West told the court: "It will go to the trustees of charities approved by West."

Not all cases that come before the magistrates are so light in texture as those I have dealt with. Often much graver issues arise, and an innocent man may be faced with the possibility of being put on trial for his life.

More than two years after he found the body of Joan Woodhouse lying in a copse in Arundel Park, Sussex, Thomas Phillip George Stillwell, a young labourer of Arundel, was arrested and charged with her murder.

It is necessary to relate the circumstances leading up to the arrest in order to emphasise the unusual nature of this case.

They were unusual because the charge was not instigated by the Director of Public Prosecutions, who, following the investigations of Superintendent Narborough, of Scotland Yard, had every available shred of evidence before him, and decided that there was not sufficient to warrant an arrest. Nevertheless, Stillwell was arrested on a private warrant applied for by the dead girl's father under the Indictable Offences Act of 1848, the first prosecution of its kind on a charge of murder since 1865.

The moment that Stillwell found the body of Joan Woodhouse on that eventful Saturday of Bank Holiday week in 1948, he went straight to the police and reported his discovery. He took them to the spot where she lay, and where it was evident she had fought for her life before she was strangled.

Scotland Yard were called in, and Superintendent Narborough, a most experienced officer, spent months following up every possible clue. The inquest was opened and adjourned. When it was resumed, the Yard man told the Coroner and jury that there was not sufficient evidence to make any arrest.

It seemed as though another tragedy was to be added to the list of unsolved mysteries.

But up in Yorkshire, at Bridlington, lived two widowed aunts of the dead girl. They were not satisfied that everything had been done, and they engaged a private detective to carry out inquiries which they hoped would lead to the conviction of the murderer. For two years the detective pursued his own investigations. Then in July 1950 an application for a warrant for the arrest of Stillwell was made to the Bench of Justices of the Peace at Arundel.

It was granted, and in due course Stillwell appeared in an improvised court held in the 17th-Century Town Hall, on a charge of murder. There was no dock, and the accused man was allowed to sit at the solicitors' table.

Meanwhile, all the necessary papers had been handed to the Director of Public Prosecution, who alone can prosecute on the capital charge. He was represented in court by Mr J. S. Bass, who in opening the case said: "It is right that I should say at once that the evidence against this man is wholly circumstantial.

"There is not one single piece of evidence which goes directly to show that he was a party to the commission of that crime. If you come to the conclusion that the evidence does no more than to show that he had the opportunity to commit this crime if he so desired, I submit that it would not be proper to commit the man to take his trial."

Surely one of the most extraordinary openings in a case of murder ever heard in a court of law! But it stresses once more the earnest insistence that justice shall be done whatever the issue may be.

Witnesses were called, and all the evidence was presented before the five Justices of the Peace (two of them women), who were to decide whether or not there was a *prima facie* case sufficient to commit Stillwell for trial. Thirty-five witnesses were called, examined by Mr Bass and cross-examined by Mr Vincent Jackson, who appeared for the accused. For several days the hearing went on, and then Mr Bass rose to his feet. He did not ask for a committal. Instead, in a quiet voice he said: "That is all the evidence the Crown can put before you."

Mr Jackson, in his closing speech to the Justices said: "Never before in a charge of murder have you had less evidence."

The Justices retired. On their return, the Chairman, Mr E. West, said: "We are of unanimous opinion that there is not sufficient evidence to justify putting the accused upon his trial."

So amid cheers and hand-clapping Thomas Stillwell was discharged.

I have only been able to touch on a tithe of the manifold duties of a magistrate whether he be Stipendiary or Justice of the Peace. But I have given enough, I hope, to show that his is a *human* court in every sense of the word.

You will probably have noticed that in the Police Court cases, police and accused have been represented by solicitors. This does not mean that barristers do not appear in the "lower courts", as they are often termed. They can and do, but on these occasions they do not wear either wig or gown but present themselves in ordinary morning dress with striped trousers and black jacket and waistcoat.

Solicitors, on the other hand, cannot act for a client in the High Court. Sole audience there and the wearing of distinctive dress is the exclusive privilege of Members of the Bar. Solicitors only "instruct" counsel to appear on behalf of their clients in any High Court trial or action. Barristers, however, are not permitted to accept any brief except through a solicitor, whose statutory designation is "officer of the court".

As regards other courts, Mr Frederick Payler in his *Law Courts Lawyers and Litigants* writes: "In police courts, bankruptcy courts, county courts and Judges sitting in chambers at the High Court, solicitors have full audience, and in some of these tribunals are not only expected, but commanded, to adopt the gown."

CHAPTER THIRTEEN

THE COURT OF THE STAR CHAMBER

THE mere mention of the Court of Star Chamber conjures up a vision of a court of the Spanish Inquisition under Torquemada; a sinister court with secret trials and diabolical tortures to extract confessions from its victims, with wholesale burnings to death as the invariable sequel.

In fact the Court of Star Chamber of England was not so bad. True, there *was* resort to torture on occasions, but there were no secret trials, nor death sentences by burning or any other means. It differed again from the Inquisition, in that its operations were political rather than religious, although there was usually a number of ecclesiastics included among those who presided as judges.

It is not a court of which we can feel unduly proud, but, as it played such an important part in the development of the legal system in medieval times it has its place in the story of English Justice.

Unlike all the other courts with which I have dealt, the Court of Star Chamber has no modern equivalent, not even in the Judicial Committee of the Privy Council. Unlike the Council which presided over the Star Chamber, the Judicial Committee of to-day is bound by the same rules of evidence that govern every other court of justice in the land. Nor is it a court of the first instance. It does not try cases, it only deals with appeals from the decisions of courts throughout the Empire, and with appeals from the Consistory Courts dealing with ecclesiastical matters.

The Court of Star Chamber did try cases. That it has passed for ever from our legal system is no occasion for mourning.

Most historians are agreed that the Star Chamber derived its name from the ceiling which was originally studded with gilded stars. But Sir Edward Coke, the great lawyer, judge and statesman, 1562–1634, disagreed with this suggestion and maintained that the name was not derived from the stars on the ceiling, which were obliterated before the reign of Elizabeth, but from the *Starra* or Jewish Covenants deposited there by Richard I.

That gives a much earlier origin than is generally accepted. We know that in 1347, in the reign of Edward III, a Star Chamber was built on the east side of Palace Yard, Westminster. When the

building was completed in 1348 it was used as a meeting place for the King's Council, and it is in that year that we first hear of it as the *Sterred Chamber*; thus it was neither built as a court nor used as one at that period.

You will recall that in the middle ages, judicial functions were exercised by the King and his Council. Nor did the Crown ever part with its Supreme Jurisdiction. But as I have pointed out, most of the judicial work was left to the Judges in their own courts, so that the Council was not a court in the true sense of the term. It was mostly too busy with its executive and legislative work.

Coke tells us that "the Council in ancient times rarely sat judicially." When it did, it was always reinforced by the presence of Judges.

In the Selden Society publication, *Cases before the King's Council*, it is also stated: "It would be hard to count a hundred cases fully dealt with before 1485."

Yet is is abundantly clear that the Council, sitting in the Star Chamber, did exercise judicial powers; for, in the reign of Richard II, 1377–1399, we find that the Judges were "summoned to give advice on law", while in Henry VI's reign, 1422–1461, the Judges were called upon "where the Council is not learned enough".

As a specific court of justice, however, the Star Chamber did not function until the Council began to shed whatever judicial activities it may have exercised, in order to concentrate more and more on its executive duties. One of the main influences in establishing the *Court* of Star Chamber was the War of the Roses, 1455–1484, as a result of which the machinery of government was virtually paralysed as was the work of the Council. The law was brought into disrepute by the action of its officers. Bribery and corruption were rife, and lawlessness flourished.

That was the position when Henry VII came to the throne, and it was to re-establish the reign of law throughout his realm that he instituted the Star Chamber Act of 1487. This has been hailed as the Statute by which the *Court* of Star Chamber came into existence.

It is worth while quoting the preamble to this Statute, as it reveals the reason for the institution of the court. It opens:

> "The King, our said Sovereign Lord, remembereth how by unlawful maintenance, giving of liveries, signs and tokens, and retainders by indentures, promises, oaths, writing or otherwise embraceries of his subjects, untrue demeaning of sheriffs in making of panels and other untrue

returns, by taking money of juries, by great riots and unlawful assemblies, the policy and good of this realm is almost subdued, and for the not punishing of these inconveniences . . . whereby the law of the land may take little effect, to the increase of murders, robberies, perjuries, and unsureties of all men living, and losses of their land and goods to the great displeasure of Almighty God.''

It gave the court power to call before it any offender ''to examine, and such as they find defective, to punish them . . . in like manner as if they were thereof convict after the due order of the law.''

No title was given to this tribunal in the Statute itself, but in the Parliament Roll of that time it is headed *Pro Camera Stellata.*

Hall, in his *Chronicle*, gives a description of this body in the quaint language of that day.

> ''Henry established in his house a graue counsaill of wyse and politique men, by whose judgement, ordre, and determinacion the people might be governed accordyng to justice and equitie, and that all causes might be finyshed and ended there without great bearyng or expence in long sute.''

Once more we can appreciate how the needs of the time gave rise to the appropriate means of remedying an evil. That Henry VII had the well-being and peace of his realm at heart, may be gathered from the fact that during the first two years of its existence he himself sat in the Star Chamber on no fewer than ten occasions. In theory the court was held before the King, and at all subsequent sittings an empty chair was always reserved as a symbol of his presence.

Stow, referring to this Act, remarks that the Star Chamber was ''revived by Henry VII for trials by a committee of the Privy Council which was a violation of Magna Carta as it dealt with criminal and civil cases unfettered by rules of law.''

This was indeed so. The mode of procedure was twofold. By *ore tenus* (by the mouth), or by bill and answer. The former was usually the outcome of some secret information given to the Council concerning some person or persons.

The accused would then be haled before the Council and privately examined without oath. If he refused to answer any questions, he would be sent to prison until he thought better of it. But if, through the cunning of his interrogators, he was trapped into anything approaching a confession, he was brought to the Bar of the court,

his confession or examination was read, and he was convicted *ex ore suo* (out of his own mouth).

The other procedure by Bill was on the Attorney-General's information, when the accused was served with a writ stating the nature of his offence, to which he had to put an answer, duly signed by counsel. After this answer had been presented he was then summoned to the court and there compelled to answer on oath *written* interrogatories. To-day we should call them affidavits. They were depositions made on either side, by the respective witnesses.

The oath that was administered to the accused is very similar to that used in the courts to-day. "You shall true answer make to all such questions as may be demanded of you, so help you God."

If ordinary questioning failed, then torture was applied to extract the "truth".

With the written depositions before them, and with the witnesses against the accused privately examined, the Lords of the Council, without any jury, either acquitted or convicted the prisoner.

And who were these Lords of the Council? Let Coke tell us:

> "The judges of the court are the Grandees of the Realm, the Lord Chancellor, the Lord Treasurer, the Lord President of the King's Council, the Lord Privy Seal, all the Lords Spiritual and Temporal and others of the King's most honourable Privy Council, and the principal judges of the realm. . . ."

Not all these worthies sat, however, and the number of the Council who attended the court varied from forty downwards.

Crimes of the greatest magnitude were tried in the Star Chamber, but were punished only as trespasses. That appears to be the only restriction upon the judicial powers of this body, which could inflict every other sort of punishment with the exception of death. Pillory, fine, imprisonment, branding and mutilation were among them, but not capital punishment.

This tribunal was bound by no law, but more or less created and defined its own offences. For example, perjury, forgery, riot, fraud, libel and conspiracy were practically unknown to common law, but were dealt with in the Star Chamber, so that we owe a small debt of gratitude for its inclusion of these offences in the list of punishable crimes against the person or the community. It also took into consideration the attempt to commit certain crimes such as coining, murder, burglary, poisoning, blackmail, and "entangling young

gentlemen in contracts of marriage to their utter ruin to which no Statute extendeth''.

Mr Carter sums up the credit of the Star Chamber in its contribution to our legal system when he says:

> ''The Star Chamber permanently enlarged the limits of the English Criminal Law by enriching it with a list of common law misdemeanours which, before unknown or little considered, we owe to its vigilance as *custom morum*; and when the Court fell never to rise again, the King's Bench without difficulty adopted the Star Chamber tradition.''

Sir Francis Bacon likewise eulogises this court which, he stated, ''is compounded of good elements, for it consisteth of four kinds of persons, counsellors, peers, prelates and chief judges.''

Here in this Chamber, then, appeared famous and infamous persons alike, to be tried on all sorts of charges. Here, too, Wolsey, Archbishop of York, Cardinal and Lord Chancellor in turn, flaunted his magnificence, proceeding to the Star Chamber in great state, his mace and seal of office being carried before him. That same Wolsey of whom it has been written, ''he spared neither high nor low, but judged every estate according to their merits and deserts''. That same Wolsey, too, who was later arrested for high treason, and who died on the way to his trial in 1530.

Fines were much heavier in those days than they are to-day, as were the sentences. Thus we read that one ''Bennet was fined a thousand pounds to the king, and another to the Earl of Marlborough, for saying that he dealt basely with him for not paying him thirty pounds . . . and laying to his lordship's charge that he was a common drunkard.''

Dr Williams, Bishop of Lincoln, was also fined £5,000 for describing Archbishop Laud as ''the great Leviathan''. That Laud was afterwards beheaded on Tower Hill in 1645 under a Bill of attainder is an anticlimax to the story.

In 1587 occurred one of the most sensational of all the trials held in the Star Chamber. It was that of William Davison, one of Elizabeth's principal Secretaries of State, who came before the Council for a ''Misprision and Contempt'' consisting of speeding up the execution of Mary Queen of Scots.

One gets a glimpse of the constitution of the Court of Star Chamber on this occasion, for those presiding were Sir Christopher Wraye, Knight, Lord Chief Justice of England, the President; the

Archbishops of Canterbury and York; the Earls of Worcester, Cumberland and Lincoln; the Lords Grey and Lumley; Sir James Croft, Comptroller; Sir Gilbert Murray, Master of the Rolls; Sir Edmund Anderson, Lord Chief Justice of the Common Pleas; Sir Roger Manwood, Lord Chief Baron (Exchequer); and Sir Walter Mildmay, Chancellor of the Exchequer.

Davison was accused of having communicated the warrant ordering the execution of Mary Queen of Scots to the Privy Council contrary to her Majesty's directions; and with informing them that it was Elizabeth's intention that the warrant should be speedily executed "when he was conscious the Queen had no Intention she should be executed; at least till further Orders."

In his defence Davison urged that he "thought the Instrument was irrevocable . . . and that in his own Judgment the times were very dangerous; and he should have been severely censured if Her Majesty had come to any Misfortune while he had concealed the Warrant."

The Court found that he had been guilty of misprision and contempt in causing the Queen of Scots to be executed "without her Majesty's Privity", but they believed he had acted sincerely. The sentence was that he should be fined ten thousand marks and be imprisoned during Her Majesty's Pleasure.

Strange charges and equally strange trials took place within this Chamber, where so much history was made.

In 1632 a gentleman named Sherfield was brought there for having broken a glass window in a Salisbury church. According to his story he was incensed because the window was "not a true representation of the Creation, for it contained divers forms of little old men in blue and red coats and naked in the head, feet and hands, for the picture of God the Father, and the seventh day he hath therein represented the like image of God sitting down taking his rest, whereas the defendant conceiveth this to be false."

Nor was this all; for Eve, according to Mr Sherfield, was represented as being taken whole out of Adam's side whereas in fact only a rib was taken and made into Eve.

So strong was the resentment of the defendant at the liberty thus taken with the Scriptures, that he took his pikestaff and rammed it through the window in seven places. He must have been very vigorous in his attack, for, as one witness stated, "the staff broke and he fell down into a seat and lay there a quarter-of-an-hour groaning."

That exhibition of pique cost Mr Sherfield £500 when at length he came before the Court of Star Chamber. A chastening penalty for a matter of principle.

In spite of the commendations of Coke and Bacon, and despite the fact that it achieved a certain popularity among some people, there came a time when the Star Chamber fell into disrepute. Doubtless the severity of the sentences meted out was largely responsible, particularly those passed upon people found guilty of libel.

The trial of William Prynne in 1632 is an example of what I mean. Prynne was "informed against" in connection with a book he had written. By way of defence he declared that the book had been licensed. His counsel who signed the defence stated that "he (Prynne) is heartily sorry that his style is so bitter and his imputations so unlimited and general."

But this plea in mitigation availed nothing, and Prynne was sentenced to stand twice in the pillory and on each occasion have one ear lopped off. He was also fined £5,000 and ordered perpetual imprisonment.

Even so, he continued his libels, referring to Archbishop Laud as an "Arch-Agent for the Devil", and referring to the Bishops in general as "Luciferian Lords, execrable traitors, and devouring Wolves".

Behold, then, the unrepentant William once more before the Star Chamber, this time accompanied by two others named Bastwick and Burton. In his answers to the interrogatories, he was even less temperate in his language than before. He alleged that "The Prelates are invaders Prerogative Royal; Contemners and Despisers of the Holy Scriptures; Advancers of Popery, Superstition, Idolatry and Profaneness; that they abused the King's Authority to the Oppression of His Loyal Subjects; and therein expressed great Tyranny, Cruelty and Injustice; And that in the Execution of this Performance, they showed neither Wit, Honesty, or Temperance; nor were they Servants of God as they ought to be, but of the Devil. . . ."

William was fortunate in that he came before the Council of the Star Chamber, for if he had come before any of the other courts, his crime, stirring up sedition among the people, would undoubtedly have resulted in the penalty of death. But, as I have pointed out, the Star Chamber was not competent to pass the capital sentence, and so both William and his fellow prisoners were ordered to have their ears lopped off as they stood in the pillory.

But Prynne had no ears left, you will recall. Hence he suffered the not less painful punishment of being branded on both cheeks.

That was not the last of William. The Parliament which began the rebellion in 1641 came into power, and the Government of the day brought Prynne, Bastwick and Burton from their various

prisons; and parading them proudly in triumph, it presented each of them with £4,000 for their part in stirring up the populace against the King and the Church. Nor was that all! Prynne was elected to the House of Commons where he sat during the best part of the Usurpation.

I could go on relating stories of the trials that were heard in the Court of Star Chamber, but I have given a sufficiently graphic picture to indicate the part it played in the history of the courts of justice.

It was finally abolished by an Act of Charles I in 1641 during the term of the Long Parliament, and I quote the somewhat scathing requiem written by Maitland and Montague in their *History of English Legal Institutions.*

> "It was in a room known as the Star Chamber that the Council sat when there was justice to be done, and there, as the Court of Star Chamber, it earned its infamy. . . . It had become a political court and a cruel court in which divines sought to impose their dogmas and their ritual upon a recalcitrant nation by heavy sentences; in which a king, endeavouring to rule without a Parliament, tried to give the force of statutes to his proclamations, to exact compulsory loans, to gather taxes that the Commons had denied him; a whipping, nose-slitting, ear-cropping court; a court with a grim unseemly humour of its own, which would condemn to an exclusive diet of pork, the miserable puritan who took too seriously the Mosaic interpretion of swine's flesh. . . . After the Civil War and the restoration no attempt was made to revive it, but that it had been doing useful things then became evident. The old criminal law had been exceedingly defective, especially in relation to those offences which did not attain the rank of felonies. The King's Bench had, for the future, to do what the Star Chamber had done, but to do it in a more regular way and not without the interposition of a jury."

I cannot close this chapter without a brief mention of the Court of Requests, which would seem to have come into existence about the same time as the Star Chamber, and to have functioned side by side with that Court during its lifetime of three centuries.

Some authorities attribute its beginning to an order in the reign of Richard II, 1377–1399, which directed that the Council should expedite the hearing of cases brought by the poorer people. In the Selden Society publications, however, it is stated that the first men-

tion of the Court of Requests is to be found in 1529 when it is written, "Hereafter folowe the names of such Counsaillours as be appoynted for the heryng of power (poor) mennes causes in the Kynges Courte of Requestes."

However that may be, there is a definite Statute in the reign of Henry VII dated 1495, which says:

> "Be it Enacted . . . that every poure persone or persones which have and hereafter shall have cause of accion or accions ayenst any persone or persones within the realme, shall have, by the discrecion of the Chaunceller of this realme, for the time being writte (writ) or writtes originall and writtes of sub pena according to the nature of their causes, therfor nothing paieng to youre Highnes for the seales of the same, nor to any persone for making of the same writte or writtes to be hereafter sued. . . ."

So that thus early in our legal history we see an attempt to make the law available to the poor as well as the rich in what we now refer to as *forma pauperis*.

Carter tells us that "Suppliants to the court alleged usually either that they were too poor to sue at common law or that they were the king's servants attending the royal person. When the professional element first appeared in the court it is hard to say, but at the end of the reign of Henry VIII 'the court was composed of professional lawyers, civilians and canonists, and the Judges were styled Masters of Requests'."

It differed from the Star Chamber in that it dealt only with civil litigation. In other words it was the poor man's court where he could get equity without the expense of going to the Chancery Court. It was probably this, which, resulting in a loss of business to the lawyers and a lessening in fees to the common law courts, aroused the opposition of these two bodies. The result was that the Court of Common Pleas and the Queen's Bench Court began to issue prohibitions to those who sought to bring their cases in the Court of Requests.

We need not go into the details of the struggle which followed. It is enough to say that in August 1642, the year that the Civil War broke out, the Court of Requests came to an end.

I shall have something to say about another Court of Requests of later date, when I come to deal with the story of present day County Courts.

CHAPTER FOURTEEN

THE COURT OF EMPIRE

AT the corner of Downing Street where it touches Whitehall, stands one of London's unpretentious buildings with an equally unpretentious door.

If one entered that door and climbed the stairs to the first floor, one would find at the end of a short corridor a room, on the right of which as you enter is a large old-fashioned fireplace. Ahead is a horseshoe shaped table, in front of which stands a structure something like a pulpit.

This room is spacious though modestly furnished; the walls are lined with books, with here and there an oil painting to relieve the lack of colour.

In this unimpressive room sit the members of the Judicial Committee of the Privy Council, the supreme and highest court of jurisdiction in the British Commonwealth, which not so long ago exercised its sway over a quarter of the inhabited globe and applied its judicial powers to the legal problems of over 400,000,000 subjects of the British Empire. Within recent years, as we shall see later, this widespread jurisdiction has been curtailed by those Dominions which have self-government. But it still extends over a large area of the world.

In the same way as the House of Lords deals with appeals against verdicts and judgments in the lower courts in England and Wales, so does the Judicial Committee of the Privy Council deal with appeals from every part of the Empire or, to use the new term, Commonwealth. But its activities, as well as its history, have been bound up with the Empire before that word was exchanged for Commonwealth.

No sign of its majesty or power is visible in the library-like surroundings of this court. None of the pomp and ceremony which marks the procedure of other courts is to be observed during its hearings; nor is any of the colourful glamour which attends learned Judges at Assizes to be seen in connection with the five rather middle-aged or elderly gentlemen who preside over the appeals which come before them.

They sit at the horseshoe shaped table in ordinary morning dress. They wear no wigs, and the atmosphere is so prosaic that one finds it difficult to realise that one is watching the most powerful legal

tribunal in the world at work. It is equally difficult to realise that the conversationally-spoken *recommendations* of these five gentlemen are confirming or revoking the verdicts of courts in various parts of the Empire, thousands of miles away.

I use the word *recommendations* because the Judicial Committee does not pronounce *judgments*. It is a purely advisory body, and its duty is to "humbly advise" the King as the personal and original source and dispenser of justice.

All appeals are therefore addressed to "The King's Most Excellent Majesty in Council", and theoretically it is the Crown which confirms or upsets a judgment of a lower Empire court.

Thus, the court, which is a comparatively modern part of our legal machinery—having been in existence just over a century—is but an evolution from that ancient right which I have already described; the right of a subject to appeal to the King in Council against what he believed to be a wrong decision.

We have seen how this Council functioned in the Star Chamber; and, though the Act of Charles I, 1641, which abolished that Court, imposed some restrictions on the Council, it did not make any difference to the right of any of the king's subjects in a foreign dependency of the Crown to appeal for justice to the King in Council. And, as the Empire grew in size and numbers, so did its jurisdiction increase.

Thus it was a sort of link holding together all the scattered dominions of the Crown. As we know, the Council was originally made up of a miscellaneous assortment of gentlemen ranging from Princes of Royal blood, Dukes, Lords, Bishops and other great nobles. They held their proud place in this august body by virtue of their blood and position.

They advised the King on all government business in those early days. Later, instead of calling the whole Council together, only a few were summoned, and these in time became the Parliamentary Cabinet. But, just as this political committee evolved, so did a judicial committee arise; this eventually developed into the body which now functions under the title, Judicial Committee of the Privy Council. It acts as a Court of Appeal for the Empire, and in connection with appeals from the Ecclesiastical Courts now largely confined to matters of the church and the discipline of the clergy.

Hitherto, appeals in ecclesiastical matters had been referred to the *Court of Delegates* which carried the full judicial authority of the Crown. The "Delegates" were "such persons as shall be named by the King's Highness".

In 1832 this court was the subject of an inquiry by a Royal Commission, which reported that while no substantial charge of injustice or of exceeding its powers could be maintained, its proceedings were tardy, costly and undignified. This latter referred to the custom of the victorious party in paying a guinea to each of the Judges when the case was over.

In that year the judicial powers of this court were transferred to the King in Council. Meanwhile, it was felt that the Council was not exactly fitted to function as a court of justice, and as Maitland and Montague state in *English Legal History*: "It was a large body, chiefly composed of persons without legal knowledge. Its legal members would naturally do its legal business, but no such division had yet been enforced by law."

In the year 1833 an Act for The Better Administration of Justice in His Majesty's Privy Council was passed. We have to thank Lord Brougham, that great orator, politician and lawyer, who defended Queen Caroline, for the initiation of this Act which held that only persons holding, or having held, high judicial office should sit as judges on this body.

The first sitting of this newly-constituted court was in November 1833 when Lord Brougham (then Lord Chancellor), Sir Lancelot Shadwell, Vice-Chancellor, the Rt Hon Thomas Erskine, Judge in Bankruptcy, Baron Parke of the Court of Exchequer, and Mr Justice Bosanquet presided. It was on an appeal from Antigua, and after a patient two days' hearing these learned men of law "advised" William IV to reverse the judgment against which an appeal had been made.

One hundred years later, on the centenary of the inauguration of this Court of Empire, in 1933, Lord Macmillan wrote: "No court in the world's history has possessed so wide a sphere or so august a position, and yet, strange as it may seem, there is probably no tribunal of which so little is known to the average citizen."

The laws which this Judicial Committee have had to apply in the past, and still have to apply on occasion, are of the most diverse nature. Tribal customs; obscure questions of Hindu or Muslim law; in addition, civil codes founded on French law in connection with Quebec have had to be considered; and in dealing with appeals from the Channel Islands, the ancient customs of Normandy had to be taken into account.

When some abstruse constitutional question came from, say, India—before it achieved independence—or Africa, it was the invariable rule to have present a Colonial Chief Justice from the

particular Dominion or Colony concerned; with his intimate knowledge of the particular district, he was able to advise upon local laws and usages.

The variety and romance of the cases which came, and still come, before this Committee have seldom been equalled in any other court.

It might be that a burial ritual in some remote part of Africa formed the subject of appeal. A trading custom in Hong Kong may bring a litigant thousands of miles to urge his plea for justice before this court. A dispute about two idols has more than once resulted in the drabness of this court being enlivened by the presence of natives in highly-coloured head-dress and flowing robes.

I have been present at many scenes in this room. If ever there were examples of that hackneyed statement that truth is stranger than fiction they are certainly to be found in this court.

One day in the early 'twenties, nine men, blistered with the heat of the sun, emaciated from lack of food and half mad with thirst, their swollen tongues making speech almost impossible, reached the shores of Trinidad after a 600-mile journey in an open boat, across the sea from Devil's Island.

They were convicts who had escaped from the notorious French penal settlement only to face the fearsome possibility of being returned. They were brought before the Trinidad courts.

"Yes," it was decided, "they must be returned to France."

But it was not so simple as that. There were finer points of law at issue. Extradition treaties between France and Great Britain certainly demanded their return, as they were French prisoners. But an appeal was made to the Judicial Committee which, while it knows no sympathy, is not bounded by territorial considerations.

The Committee wanted to know one thing only. Where *were* these men when they committed the crimes for which they had been sent to Devil's Island?

In Syria and Morocco, it turned out, not in France nor on French soil. In consequence, declared the five men at the horseshoe shaped table, the extradition treaties did not apply. The nine men were free to go.

In 1926 there came from Australia a woman who at different times had been rag-and-bone merchant, laundress, beauty specialist and clairvoyant. She had amassed a fortune of some £12,000, all of which she kept in gold buried in her garden.

The woman was Mrs Mary Scales, of Sydney. She came to this tribunal asking it to reverse a decision of the Supreme Court of New South Wales, dismissing her claim that certain money her husband

had possessed and dealt with in his will was only held by him as her agent.

It was stated in court that the bulk of the fortune of Mrs Scales had been made before her marriage in 1883, at a time when she was a rag-and-bone dealer and could neither read nor write.

I remember that this revelation opened the way for the late Lord Darling, who was at his jovial best throughout this appeal, to remark that "People for centuries have been good people of business, monarchs who governed countries, and people who managed their own affairs very well, and yet they could not read or write. Why there are people in the House of Lords to-day who can only use a signet ring . . ."

A little later on he commented that "the testator was clearly a man of property, because it was in evidence that he kept two women besides his wife."

Mrs Scales joined in the laughter which greeted this sally.

The whole question at issue was whether or not the money, on which the husband undoubtedly built up a fortune, was a gift to him from his wife, or whether it was handed to him in trust. There was no dispute as to who provided the money.

An amazing story of the manner in which Mrs Scales had amassed her wealth was told before the Committee, and of how, after her marriage to Mr Scales, she kept her fortune, some £12,000 all in gold, buried beneath a bed of lilies in the garden. Mrs Scales described how one night she dug up 2 cwt of gold from this hiding place and gave it to her husband for the purpose of speculation in land and property.

Mr Scales died in 1907 leaving £50,000. In his will he stated: "I acknowledge that whatever property I possess is the result of moneys earned and saved by my present wife, and which she has given me."

In spite of this eulogy to his wife's thrift and generosity, the husband left most of the £50,000 to other people. The widow thereupon brought an action in the lower courts, where it was found that whatever money she had advanced to her husband was a gift. The Supreme Court upheld this view, and so it was that Mrs Scales travelled to England to fight her appeal before the Privy Council.

This tribunal listened patiently to what learned counsel on both sides had to say; and, when counsel for the executors described the widow as an "eccentric woman", and stated that "she had foretold the war (1914) at a seance", Lord Darling remarked drily: "That showed she *had* certain gifts, not that she *made* any."

The Privy Council found for the executors, however, upholding the verdict of the lower courts in respect of all the money alleged to have been handed over, with the exception of £4,000. They ordered than an inquiry should be held to trace all purchases of property made with that £4,000, and added that any of the amount unexpended should be refunded to Mrs Scales with interest from the time of her husband's death.

Should an idol in an Indian temple be draped before being worshipped, or could it be worshipped in the nude?

That was one of the peculiar disputes which the Judicial Committee were called upon to decide in 1929, when two sects of the Jain community, the Digambaris and the Swetambaris, laid claim to an ancient idol which for over five hundred years had been worshipped in the Jain temple at Shirpur, India.

This idol rejoiced in the name of "Shri Antariksha Parnasnathy Maharaj". For 23 years litigation had been going on between the two sects, and six of the litigants had died before the matter came before the Privy Council in the form of an appeal against the judgment of a lower court of the Central Provinces of India.

The difference between the two sects was that whereas the Digambaris worshipped their idols in a state of nudity, the idols of the Swetambaris were revered fully clothed and decorated with priceless jewels and ornaments.

There was a long history of dispute as to whether this particular diety (worshipped with equal fervour by both sects) was a Digambaris or a Swetambaris idol, but that was not the only issue between the parties.

Never by so much as a flicker of an eyelid did any of the five Judges who comprised the court betray a sign of the amusement they may have felt, as they listened to arguments of counsel. And when at length the whole story had been told, Lord Blanesborough went carefully over the grounds of the dispute.

He detailed the history of the various actions brought, and narrowed down the issue to the point whether the Swetambaris, who were in the habit of plastering the idol round the middle so that it had a sort of waistband, had the exclusive right in the property and management of the deity. They urged that they had, and claimed substantial damages against the Digambaris. The latter, on the other hand, claimed damages for the plastering of their idol.

In 1905, said Lord Blanesborough, a time-table had been set down by one of the courts by which the two sects took it in turns to worship the idol. Either sect had the right to carry out their worship-

ping during the specified times, and either had the right to collections of money and offerings from their respective worshippers.

The Digambaris right to the time table must not be interfered with, said Lord Blanesborough. On the other hand, he held that the Swetambaris had the right to the management of the temple, and the Digambaris must not interfere with them in the plastering of their diety. If these points were kept in mind, his Lordship concluded, there seemed to be no reason why the relations between the two sects should not be perfectly harmonious.

A tactful, human and essentially legal decision, gratefully accepted by the respective parties.

Criminal cases only come before the Privy Council when some grave miscarriage of justice is alleged to have taken place. But the Judicial Committee holds precisely the same powers in these cases as in others. Thus, from time to time these Law Lords, still without wigs or robes, and lacking all formality, sit to consider the appeal of someone condemned to death for murder in some outpost of the Empire.

The most sensational murder appeal I ever attended before this tribunal was that of Dr Benjamin Knowles, who, after being sentenced to death for shooting his wife at Kumasi, Ashanti, was reprieved and sentenced instead to imprisonment for life.

It had a particular interest for me, because I had known the wife when she was Madge Clifton, a popular music-hall artiste; and I had also known Dr Knowles as the friend of a medical namesake of mine, living in Bloomsbury, London.

It was a sordid story. Husband and wife used to drink heavily, and the marriage was far from happy. Knowles was a medical officer in the Colonial Service. One evening there was a quarrel, a shot was fired, and the wife was found dying. She herself declared before her death that she was sitting upon her husband's revolver at the time of the quarrel, and it was while she was trying to remove it from beneath her that her sleeve caught in the trigger and it went off.

There were certain suspicious circumstances, however, and the doctor was arrested and brought to trial. The trial was conducted in the greatest secrecy, the proceedings being held *in camera*. No counsel for the defence was allowed, nor was there any jury. This was in accordance with Ashanti law.

The trial was conducted by an acting circuit Judge who, while admitting that the evidence was very confusing, did not hesitate to sentence Knowles to death. The sentence had to be confirmed by the

Governor of the Gold Coast, who did not confirm it, but commuted it to one of imprisonment for life.

It was after this that Dr Knowles appealed to the Privy Council on two main questions:

Whether there was any jurisdiction in the trial court to try the case without a jury?

Whether there was any reliable evidence upon which a conviction could safely and justly be heard?

Sir William Jowitt, then the Attorney-General, appeared for the Crown, with that doughty K.C. Mr D. N. Pritt representing the doctor.

Half way through the arguments of Mr Pritt, their Lordships indicated that they would like to hear the Attorney-General on the points so far raised. Sir William, with that scrupulous fairness which always characterises counsel for the Crown, emphasised that the real point at issue was whether it had been proved that the fatal shot had been fired by Dr Knowles, and with intent to murder? Was there evidence to prove this beyond all reasonable doubt? If there was not, then he would ask their Lordships "not to regard themselves as too strictly bound by legal considerations."

The conviction was quashed, and I was able to renew my acquaintance with the doctor, who died a few years after regaining his freedom.

One other murder appeal which comes to my mind was that of Chung Chi Cheung, a 23-year-old cabin boy who was sentenced to death in 1937 for the murder of a British captain of a Chinese Customs' cruiser. He appealed to the Supreme Court at Hong Kong where the verdict was upheld. He next appealed *in forma pauperis*, this penniless cabin boy, to the highest tribunal in the Empire, just as young Woolmington was able to have his appeal heard by the Law Lords sitting in the House of Lords.

No perfunctory hearing this either, for on behalf of the Crown, the Attorney-General, Sir Donald Somervell, K.C., appeared, while to fight the case for the youth lying in prison 8,000 miles away was Mr H. J. Wallington, K.C.

The question in this appeal was whether the alleged offence, having been committed on board an armed public ship of China, came within the jurisdiction of the courts of Hong Kong.

Stacks of leather-bound law books lay on tables for counsel to refer to. The Hong Kong courts had no jurisdiction, argued Mr Wallington, while Sir Donald as dispassionately set out his arguments for the opposite view. No rhetoric, just the plain straightforward

appeal on points of international law raised by either side. Lord Atkin was the presiding judge of the five who sat to hear the appeal, and after a lengthy analysis of all the technicalities, he announced that "it was plain that the British Court acted with the full consent of the Chinese Government. It therefore followed that there was no valid objection to the jurisdiction and the appeal failed."

But in the meantime, the sentence on Cheung had been commuted to one of life imprisonment.

Marriage and divorce problems as well as murder come within the orbit of the Privy Council.

There was, for example, the case of Maung Aung Myat, a wealthy Burmese merchant, who, already the possessor of a wife, took a younger sister of that wife as spouse number two. The second wife was picturesquely named Mi Shew Ma, and when her husband died a few years later she was not slow to claim an equal share of his possessions with her sister.

The claim was contested, the basis of the opposition being that at all orthodox Burmese marriages it is customary for the bridegroom to celebrate the event by giving a reception at which pickle tea forms the main part of the refreshment.

Pickle tea was not given at the nuptials of Maung Aung Myat and Mi Shew Ma, it was alleged, and on these grounds the Burmese Courts decided against wife number two, who appealed to the Privy Council.

Behold, then, the greatest legal authorities in the land gathered together in solemn conclave to deal with this aggravated point of tribal law. They heard learned counsel on both sides, and by adroit questioning managed to elicit that at this all important reception Mi Shew Ma and her Lord "ate out of the same pot", after they were wed.

Now this, according to native custom, is regarded as equally binding in law. So the Judicial Committee recommended that in spite of no pickle tea, wife number two was a proper and lawful wife, and was entitled to a half share of her husband's possessions.

Another matrimonial case which exercised the legal ingenuity of the Privy Council was the question of whether a divorce decree granted in Canada should be set aside as null and void on the ground that the suit was not heard in open court.

It was in 1935 that Mrs Lillian McPherson crossed the Atlantic to appeal against the decision of the Supreme Court of Alberta, which had declared that the decision of the lower court must stand. It is yet another example of the quality of English justice that she

should be given leave to proceed as a "poor person". Thus, without cost to herself, she was privileged to have as her counsel Mr Wilfred Greene, K.C., at that time one of the highest paid and most brilliant members at the Bar, later Master of the Rolls, and now Lord Greene, one of the law lords of the Privy Council.

At the original hearing of the petition by her husband, Mrs McPherson had not defended, but she now asked the Judicial Committee to review the decision of the Canadian Court. Mr Greene argued that the question was of the greatest importance, as, if his view was accepted, then the husband was still married to the appellant, and not to the woman whom he had married after the decree *nisi* had been made absolute.

The grounds on which he based the appeal—that the decree was null and void—was that the hearing was in secret and not in public.

"The learned Judge," he contended, "withdrew himself from the proper public quarter appointed for the hearing of trials. . . . Did he in such circumstances cease to be a Judge at all?"

The obligation of Judges to sit in open court was fundamental, counsel insisted, and then went on to show that in the case of Mrs McPherson, the trial was held in a library on the second floor of the court house, that the Judge presiding was not the Judge who regularly presided over the divorce sittings in Edmonton, and that the official reporter was not the regular official reporter for the week. Only the clerk, the reporter, Mr McPherson, his counsel and the Judge were present in court during the hearing, and, Mr Greene submitted, the Judge had no right to grant a decree in those circumstances.

Every point of evidence was carefully weighed in the balance of the five legal minds, who sat there to decide this novel and vital point of law. At length they gave their decision. They pointed out that the Judge, on taking his seat, had directed that a door of the court room should be left open, and had stated that he was "sitting in open court".

The Committee accepted the *bona fides* of the Judge on that occasion, and believed that he had no intention of closing the court to the public or preventing the public from hearing the trial. On the other hand, they seriously deprecated anything which tended to restrict publicity, and for that reason expressed their view that these cases should always be tried in the fullest sense, in open court.

The appeal was dismissed.

Days, sometimes weeks, will be occupied in deciding an appeal involving perhaps millions of acres of territory. Dull, long, droning

speeches dealing with facts, figures and abstruse points of law. And then ... along comes a case in which a Colonial farmer appeals against a verdict which held him guilty of "maliciously driving locusts upon the land of another farmer".

But for sheer fictional improbability, no case that ever came before the Judicial Committee of the Privy Council exceeded that brought by Srimati Bibhabati Devi against a decree of the High Court of Calcutta in 1940. It had there been found that Kumar Ramendra Narayan Roy Chowdhuri was in fact the Ramendra of that name and not an impostor, and that he was the husband of the appellant.

This appeal, which took place in 1946, was not heard in the room at Downing Street which I have described. That building had been damaged during an air raid, and the Privy Council sat for this and other hearings in a special room at the House of Lords.

Both the court room and the corridors outside were thronged with the native parties concerned in the appeal. Amid a rainbow hue of colours, counsel gave a sombre touch. But however colourful the flowing robes of the litigants might be, they were as nothing compared with the pageantry of colour provided by the story unfolded before the Judicial Committee.

Ramendra, as I shall refer to him, was heir to the Bhowal Raj estate in Eastern Bengal. Born in 1884 he married Srimati the appellant in 1902, when he was 16 years of age and she was 13.

In May, 1909, Ramendra was taken ill and died two days later. On the following evening his body was taken out for cremation to the Hindu burning ground at Darjeeling. It was headed by two Gurkha guards carrying carbines reversed, while silver coins were scattered by the wayside as the cortège made its way to the funeral place.

Eleven years later, in December 1920, there appeared at Dacca, a *Sanyasi,* tall and gaunt, naked except for a loin-cloth, with a long beard and matted hair reaching to his knees. His whole body was besmeared from head to foot with ashes. On his forearm was tattooed an inscription which, translated, read: "The naga (naked) disciple of Dharamdas."

For a time he took up his abode under a tree at the *Madhabbari* (temple) and remained there for some time, still without clothes except a blanket, and carrying nothing but a pair of tongs and a water pot.

On May 4, 1921, he declared that he was Ramendra, the man whose body was supposed to have been burnt on that May night in 1909. And an amazing story it was that he related to the crowds of tenants and others who flocked to listen to his words.

Ramendra alleged that while he was lying unconscious at Darjeeling some sort of poison was administered by way of treatment, and he was taken for dead. On the night that he was carried to the burning ground an attempt was made to light the fire, but before it was really alight a severe storm came on. There was such torrential rain that those carrying out the ceremony fled to shelter leaving the body on the ground. The storm extinguished the flames, and thus undoubtedly saved his life by helping him to revive, although he had no precise memory of all that had happened.

When the mourning relatives returned to the burning ground they found the body gone, and conjectured that it must have been burnt.

Meanwhile, some wandering *Sanyasis* had come upon the almost dead Ramendra and carried off the body, which they tended with loving care. Ramendra, his memory "almost effaced" by his illness and sufferings, began to live with them and wandered about with them as one of their party. And, as he stated later, "having become accustomed to the life of a *Sanyasi* I became indifferent to the world."

It was only when he reached Dacca where he was recognised by relatives and people who had known him in the past, and only in response to the pressure put upon him by the local *Zemindars*, that he disclosed his identity.

It would take too long to enter into all the law suits and actions which followed. Ramendra claimed a third of the estate which was being enjoyed by his wife, but the latter, without seeing her husband, denied his identity and refused to acknowledge him as the man she married.

In August 1936 Ramendra sought a declaration that he was in fact the man he claimed to be.

The case came before the Additional Sessions Judge at Dacca, who granted the decree confirming that the plaintiff was in fact Ramendra. Thereupon Srimati, the wife, appealed to the High Court at Calcutta where the judgment of the lower court was upheld and Ramendra established as the man who had *not* died on the funeral pyre. This was in November 1940, thirty-one years after his "death".

But still the wife was loth to acknowledge her husband, or to part with any of the properties which she was enjoying in company with other members of the family.

So we come to the scene in the House of Lords, where for 28 days the Privy Council waded through the welter of evidence that had been produced over the years, and listened with patience to the learned counsel for appellant and respondent.

With patience, did I say? Mr W. W. Keightley Page, K.C., was on

his feet for 25 out of the 28 days marshalling all the points of law on which he based his appeal on behalf of Srimati. But once more the lady was unlucky, for the Privy Council upheld the claim of her husband, and thus finally established him as the Raja of Bhowal with an income of £30,000 a year.

He did not live long to enjoy his regal state, for he died in 1949.

I have already mentioned that in addition to it being a Court of Empire in its appellate jurisdiction, the Privy Council is also the last court of appeal from the ecclesiastical courts in this country. That is why the appeals of the late Archdeacon Wakeford and the late Rector of Stiffkey from the Consistory Courts which tried them, under the *Clergy Discipline Act* of 1892, were heard in this unimpressive room in Downing Street.

It was something dearer than life that these two men sought to save.

With the Archdeacon it was a question of whether he had stayed at the Bull Hotel, Peterborough, with a mystery woman, signing the register "J. Wakeford and Wife".

He admitted staying at the hotel on the crucial dates, but denied that he was accompanied by a woman. A great deal turned upon the signature in the hotel register; and, while the Archdeacon agreed that the entry with the words "and wife" resembled his handwriting, a handwriting expert who was called before the Committee at his appeal, declared that the words were either written by the cleric or were a "very skilful forgery".

I would mention here that when an appeal is heard from an ecclesiastical court, in addition to the law lords who are there to deal with the strictly legal principles involved, a number of Bishops also sit as "assessors". At the appeal of Archdeacon Wakeford in 1921, four bishops were present.

Not until they, together with the Lord Chancellor, Lord Buckmaster, and Lord Shaw, had carefully scrutinised the disputed signature, did their Lordships consider their decision. The following extract from the recommendation given by the Committee will illustrate the scrupulous care which they brought to bear on every point of evidence before giving the decision which was fraught with such terrible results for the Archdeacon.

The Lord Chancellor, referring to the Committee's study of the handwriting said:

> "The most distinctive feature, however, which appears in all those specimens of the appellant's handwriting

before the Board is the shape and position of the dot upon the 'i'. It is usually postponed by a considerable space from the 'i' to which it appertains. This is especially noticeable in the 'Lincoln' of April, where it finds its place above the 'o' in that word, and this characteristic is very noticeable indeed in the dot over the 'i' in 'wife'. If the suggestion be made that Pugh (landlord of the hotel) was the forger, it should be noticed that he dots an 'i' to the left and not to the right, as will be seen in the 'wife' of March 14."

Lord Buckmaster concluded that, upon the evidence of their own eyes, the handwriting corroborated overwhelmingly the other evidence given against the Archdeacon, and his appeal must be dismissed.

For years afterwards the Archdeacon, aided by numerous friends, endeavoured to get fresh evidence to set the judgment aside, but without avail. At length, broken-hearted and mentally shattered, he died.

Eleven years later the Rev Harold Davidson, Rector of Stiffkey, appealed against the finding of a Consistory Court holding him guilty of certain charges of misconduct brought under the same Act as that mentioned above.

Actually he appealed twice to the Privy Council. Once for leave to appeal on questions of fact, when he was represented by counsel, and later, when he petitioned for leave to appeal on points of law.

On the latter occasion he appeared in person to conduct his own case. One saw him, a diminutive yet alert and active figure, standing at the lectern, reading from sheaves of typewritten notes in his high-pitched, querulous voice.

Again one caught a glimpse of the untiring courtesy with which the tribunal listened to the rector's oft-times rambling arguments. Now and again they would remind him that they had before them the passages he was reading. Now and again, too, they would offer some assistance on a point at issue.

In the end, however, they were compelled to state that they could see no reason to interfere with the verdict of the Consistory Court, and so the appeal was dismissed.

The ownership of a baby set the Privy Council a problem to solve in 1950. It arose through the birth of two girls within five minutes of each other in adjoining beds at Kyneton Hospital, Victoria, Australia.

Mrs Alberta Morrison, one of the mothers, alleged that within

half an hour of their birth, the babies were interchanged and that she had Mrs Jessie Jenkins's baby, while Mrs Jenkins had hers. Mrs Morrison was supported in her claim by specialists who carried out blood tests and declared that Johanne Lee Morrison "cannot possibly be your child".

When the babes were three and a half years old, Mrs Morrison took the case to court, and after hearing all the evidence, the Judge decided that Nola Jenkins, the other child, was the real daughter of Mrs Morrison.

Mrs Jenkins appealed against this ruling to the Victoria Supreme Court where the decision was reversed, so that Nola reverted to her previous parentage, Jenkins. The Morrisons then brought the case to the Privy Council asking for leave to appeal against the Australian High Court decision.

For three hours, five Law Lords heard arguments on either side, and then refused leave to appeal. Hence, Johanne remains a Morrison while Nola is still a Jenkins.

In December 1949 Lord Greene, Lord Oaksey, Lord Radcliffe and Sir John Beaumont completed the hearing of the last appeal from India to be heard by the Privy Council. It was an appeal from a decision of the High Court of Madras, and it was dismissed.

Six months later, in June 1950, a brief ceremony was held in a room at the House of Lords, presided over by the Lord Chancellor, Lord Jowitt. Mr H. I. Rahimtoola, High Commissioner for Pakistan, read a message from his Government paying tribute to the services rendered to Pakistan by the Privy Council during more than a century.

Thus, another historic link between India and England has been broken. Final appellate jurisdiction has now been transferred to the Supreme Court of India and to the Pakistan High Court. In the same way, the Supreme Court of Canada is the court of last resort for that country.

CHAPTER FIFTEEN

THE COUNTY COURT

THE first thing we must do in considering the place of the County Court in the story of justice, is to realise that the County Court of to-day has no relation to the old Saxon County Court about which I have written in earlier chapters.

In the first place the modern County Court has no criminal jurisdiction as had the County Court of olden times, when presided over by the Sheriff; nor, as its title would suggest, has it anything to do with counties.

The only point of similarity between the ancient and modern County Court is that they both dealt with small causes. So far as the County Court of to-day is concerned, it bears little resemblance to that created by Lord Brougham in 1846.

It arose out of the urgent need of the people to have courts where small cases could be heard and dealt with, and where poor litigants could get justice.

Hitherto they had been compelled to take their actions to Westminster, or else await the Assizes; as we have seen, the predominance of the King's Courts gradually caused the ancient local courts to fall into decay, with the result that there was little or no provision for the administration of justice in civil cases except in a few instances to which I shall refer later on.

Travelling was difficult and expensive, and only wealthy litigants could afford the journey to Westminster, while Assizes were held at intervals. Thus, the poor man who sought to get legal redress from some debtor who owed him a small amount was greatly penalised, either through expense or delay.

There had been attempts to remedy this difficulty to some extent by the institution of the Court of Requests as I have shown, and in Kingsford's *Chronicles of London*, the following description occurs: "And the Mayre kept dyuers afternones the Court of Requestes, by meane whereof he ended many maters and variaunces hangyng atwene people to have their maters sped without spence of money."

But as we know, the Court of Requests died a natural death in 1642, and from that time onwards there were only a few local courts where the poor litigant could apply to have his "maters sped without spence of money"—courts such as the Bristol Tolzey

Court, the Salford Hundred Court, the Liverpool Court of Passage, all of which are in action to-day.

It was not until that far-seeing and progressive statesman Lord Brougham raised his voice that the establishment of a system of local courts within reach of the inhabitants of any district and within the capacity of any pocket was mooted. The growth of business and the increase of population had made such courts a vital necessity to the legal system; yet this child of Lord Brougham was born only after prolonged and painful labour. He had to fight long and hard to beat down the opposition, much of it from the legal profession itself, before the County Courts Act of 1846 came into existence.

For the proper working of the Act, the country was divided into a number of districts, each district being served by a County Court; and when I say that there are well over 400 such courts distributed over England and Wales, it will be appreciated that they are sufficiently numerous to be within reasonable distance of any member of the population.

The County Court has its own Judges, appointed by the Lord Chancellor from barristers of at least seven years' standing. Each court also has a registrar, who is a solicitor, and can also act as Judge on occasion in cases where the amount in dispute does not exceed £10. In actions where the amount does not exceed £200 (under the Administration of Justice (Miscellaneous Provisions) Act 1938), the County Court on its common law side, has all the powers of a High Court Judge of the King's Bench Division. On its equity side it deals with matters assigned to the Chancery Division within the limit of £500, while certain of the courts have the jurisdiction of a High Court Judge in Admiralty in claims not exceeding £300. In matters of Bankruptcy, too, jurisdiction is limited to cases of small magnitude, and the winding up of companies with capital not exceeding £10,000.

Under a variety of Acts dealing with what I would term *communal* causes, the jurisdiction of the County Court ranges over a multitude of Statutes from the Adoption of Children Act and Agricultural Holdings to the Rent Restriction Acts and Workmen's Compensation Acts. The Judge has power to commit to prison for contempt of court, and he is the arbiter on all manner of questions from the Guardianship of Infants to the operation of the Hire Purchase Act of 1938.

A variety of other legal business is brought before the County Court Judge, but in the main the majority of cases he deals with are those brought for the recovery of petty debts.

In 1936 I was present in Lambeth County Court when James Everest, a motor-coach driver, applied to Judge Spencer Hogg in connection with a claim under the Workmen's Compensation Act.

It was the first case of its kind in any court, and it was because of this that I attended the hearing. It was an unusual story.

In 1934 Everest, while driving a coach for the United Services Transport Company, came into collision with a motor car and was so badly injured that he was awarded £500 damages and costs against the owner of the car. The car owner's insurance company went into liquidation, and Everest tried to recover his £500 from the owner of the car; but, in spite of the latter being sent to prison for not paying as ordered by the court, the injured man received nothing.

As a last resort he proceeded against his employers under the Workmen's Compensation Act, where the whole history of the case was gone into with legal thoroughness.

It was not Everest's lucky day. Judge Spencer Hogg decided that Everest had failed to show cause why he had not proceeded against his employers before the statutory limit of six months had expired, and dismissed his application with costs.

Mr F. H. Lawton, counsel for the plaintiff, told me afterwards that the question had never before been decided in this country.

William Herbert Smith, the proprietor of a restaurant in the West End of London, was standing at the bar of a public house just across the road when he jokingly remarked that he was "too tired to walk across the street" to his own premises.

Richard Burnham, the licensee of the public house, promptly lifted his customer and began to carry him through the door, also by way of a friendly joke. Unfortunately for both, however, Mr Smith's head hit the doorpost and he had to be taken to hospital where three stitches were put in the gash.

The scene now turns to the less playful surroundings of Westminster County Court, where sat Judge Dale who listened intently to the story of the joke that was now over.

William Smith was, in all friendliness, suing Mr Burnham for damages for the injuries he had sustained. Mr Burnham did not quibble about it, and Judge Dale, remarking that had the licensee been carrying his wife instead of his customer, he would have been more careful, awarded the plaintiff £19 9s in damages and costs.

It was in the Liverpool County Court that a cat figured in the main role of a claim for damages for alleged negligence and nuisance.

Jairus Edwin Withers was the tenant of a ground floor flat in St George's Road, Hightown, Liverpool in the year 1946. Mrs

Edna Florence Chad occupied the flat above. Mr Withers complained that a cat, belonging to Mrs Chad, found its way into his flat, ate some mince pies and fish, got onto a silk coverlet and scratched a bed-post.

Mr A. McFarland, solicitor for Mr Withers, contended that a cat was in the same category as a dog; and, that if it had mischievous propensities, it was the duty of the owner to keep it under control.

Mr L. Rigg, who appeared for Mrs Chad, expressed a different view. The owner of a cat was not liable for the animal's actions "when it was trespassing and following its natural propensities", he argued. "Short of keeping it locked up," he went on, "there is no way of keeping a cat under control, and it is not unnatural for a cat to steal food, seek comfort on a bed and sharpen its claws on anything available."

Evidently Judge A. T. Crosthwaite was of the same opinion, for, in giving judgment for Mrs Chad with costs, he commented that he was not satisfied that any right of action arose from what had been done by the cat.

Hair that was alleged to have "turned all colours of the rainbow", was the subject of another claim for damages, this time against a Birmingham hairdresser.

Mrs Marie Packer, of Quinton, said that she attended the defendant for a tint. "When my hair was washed," she continued, "quite a lot fell out. Afterwards it was all colours; gold, black and brown. . . . It was short like a man's on top and had scraggy ends."

Miss Maria Rand, the proprietess of the Dawn Hairdressing Saloon, giving evidence, related how she had endeavoured to dissuade Mrs Packer from having the treatment she asked for, because of the condition of her hair. "But she insisted," declared the defendant.

In these circumstances Judge Tucker held that there was no negligence and dismissed the claim.

Cases such as these are of daily occurrence in the County Courts. Trivial cases you may think, and that is the very point I have tried to emphasise in my selection of actions brought before County Court Judges. It would have been easy to have dealt with more sensational issues, but I wanted to show that, no matter how small the cause may be, no matter what the nature of the claim, the same keen judicial process is applied to its consideration.

And now, before we leave the subject of County Courts, I want to refer to those ancient local courts which I have mentioned as *still* performing something like the functions of the County Courts in the area where they operate.

Sir Henry Slesser, writing of them in *The Law*, says:

> "There still remain in some places ancient local tribunals, many of which have for a long time ceased to sit. . . . Apart from London, however, which has preserved its own peculiar constitution, resembling in many ways that of other towns before the Municipal Corporations Act, there still flourishes in more or less degree certain old local Courts. The old Court of Pie Powder is almost obsolete save in Bristol. These Courts had jurisdiction as to acts done at fairs or markets. . . . Of larger jurisdictions, we may notice the Tolzey Court of Bristol with jurisdiction to any sum; this Court is held as a continuation of the Court of Pie Powder, the Recorder is the Judge; and the Salford Hundred Court before mentioned. At Derby the Court of Record still exercises powers much curtailed by Statute, but in Liverpool there is still an important tribunal, the Liverpool Court of Passage, having unlimited jurisdiction in personal actions when the defendant lives or carries on business within the jurisdiction. It also has limited jurisdiction in other matters."

Sir Henry also mentions that "The Court of Stannaries in Cornwall has a jurisdiction along with the County Court for tin-workers."

Should it be thought that the functions of these ancient local courts are purely nominal, and that they take no part in the administration of justice to-day, let me quote from Mr Jackson's *The Machinery of Justice in England* where he states:

> "In 1936, 1,068 proceedings were commenced in the Bristol Court and 4,562 in the Liverpool Court. The Salford Hundred Court also has a jurisdiction that is not possessed by County Courts although here it is limited in amount; in 1936 12,796 proceedings were commenced."

Mr Carter in his *History of English Legal Institutions* quotes a Mr A. H. Wansey of Bristol in connection with the Tolzey and *Piepoudre* Courts of Bristol. This peculiar name originated from the "dusty feet" of the merchants who travelled far and wide, many of them from the Continent, to the various fairs and markets to sell their wares. It derives from the French *pied*, foot, and *poudre*, dust. In the course of their journeyings they became "dusty-footed".

These merchants were very welcome and valuable visitors to England for they encouraged the trade which was to become the life

blood of the country. Consequently very favourable laws were made on their behalf to protect their interests; and, as they were moving on from fair to fair and from market to market, it was necessary to ensure that there should be no delay in administering the laws in connection with our merchant visitors. These laws became known as Law Merchant, and were the foundation of commercial law, that system of rules by which trade and commerce were regulated. They were also the basis upon which international commercial law has been built up.

Lord Mansfield has stated: "The maritime law is not the law of a particular country but the general law of nations . . . the law of merchants and the law of the land is the same."

To ensure that there should be no delay in dealing with the Law Merchant, courts of Pie Powder were set up to deal with such cases on the spot. In the Doomsday of Ipswich drawn up in 1291 one finds the following reference.

> "The plees betwixe straunge folk that men clepeth pypoudrous shuldene ben pleted from day to day. . . . The plees in tyme of feyre betwixe straunge and passant shuldene bene pleted from hour to hour . . . and the plees yoven to the law maryne, that is to wite, for straunge marynerys passaunt and for hem that abydene not but her tyde, shuldene be pleted from tyde to tyde."

Let us now revert to Mr Carter's quotation of Mr Wansey who in turn is quoting from a statement drawn up by a Mr Palmer, "Prothonotary of the Tolzey Court" in 1789.

> "The Tolzey Court is an old court of record by prescription dating by tradition from Saxon times, and sits every Monday in the year. The hundred of Bristol was originally in the honour of Gloucester. . . .
>
> " . . . the court was held at the Tolzey where the king's tolls were collected. The first Sheriff of Bristol was appointed in 1373 by the charter which made Bristol a county. . . . The seneschal or steward who presided in the Tolzey was thus a royal officer, the sheriffs sitting with him as bailiffs of the hundred. In this court was the process of 'foreign attachment' of immemorial usuage, to recover debts from foreigners who do not come to England to be served. The 'foreign attachment' seizes their cargoes, ships, goods and debts in Bristol, and enforces payment, like the process

in the Lord Mayor's Court in London. . . . The Court of Piepoudre is a branch or continuation of the Tolzey and is held annually in the open street called the Old Market, before the stewards and bailiffs or one of them. . . . It sits for fourteen clear days during which the Tolzey at the Guildhall is suspended. . . . At the end of the fourteen days, everything is adjourned into the Tolzey. To this day (1789) there is the Saxon practice of compurgators."

Such was the picture of this ancient court in 1789. But Mr Wansey brings it more up to date by remarking that down to 1868 there were no rules regulating the process in these courts, but that they were brought under the Common Law Practice Acts of 1852, 1854, and 1860, in 1871.

Unfortunately the records go back only to 1827, but, says Mr Wansey, "all kinds of actions may be tried in them providing they arise in the City and there is no appeal. No sittings are held now in the Old Market, but the court is duly opened and adjourned into the Tolzey, but for the fourteen days the style is as of old."

When the courts of Pie Powder ceased to exist, except at Bristol, as we have seen, the Law Merchant was taken over by the common law under a process which was begun by Lord Mansfield, one time Attorney-General, and in 1756 Lord Chief Justice. He was so successful in incorporating the jurisdiction of these local courts into common law that in 1895 a court known as the Commercial Court was set up in the King's Bench Division, where a Judge who had specialised in commercial law could deal speedily with the cases which came before him.

A word about the Hundred Court of Salford. It may be said that while its functions have been considerably altered by Parliament, it still maintains some of the usages and traditions that it held in Anglo-Saxon times. In 1278 its jurisdiction was limited to 40s, which in the currency of to-day would be about £50. In 1846, the year that County Courts were established, it was raised to £50 in the currency of that period.

Since that time it has experienced other modifications, even as late as 1911, when it was further reconstituted. Until the Local Government Act of 1888 became law, the inhabitants of Hundreds throughout the country were still legally liable for damage to property as a result of riots. Since that year, however, the liability has been transferred to the County Council.

I have mentioned how London "has preserved its own peculiar

constitution'' with regard to its courts both civil and criminal.

The Central Criminal Court, for example, is the Assize Court for the City and County of London, and the County of Middlesex, together with parts of Kent, Surrey and Essex. I have also pointed out that London's Police Courts have stipendiary magistrates in contrast to the Bench of Justices in the country.

London's County Courts are similar to those in all other parts of the country with the exception of the Mayor's and City of London Court held at the Guildhall, which is a combination of older courts. As the City of London Court it functions as a County Court with the appropriate jurisdiction. As the Mayor's Court, it has unlimited jurisdiction in actions of contract and tort (a wrong which does not involve a breach of contract, but in which compensation or damages can be awarded) and a number of other things.

But by far the largest part of the business of any County Court is taken up with the collection of small debts. This brings me to another Court that deals with matters of debt, that grave of many a bright business or commercial hope, the Bankruptcy Court.

Twice a week in the London Gazette may be found a list of varying length containing the names of those who have either filed their petitions in bankruptcy, or who have had petitions filed against them by a creditor or creditors.

Sad lists, these, for more often than not there lies behind each name a story of struggle and hardship, with maybe a slice of bad luck or perhaps an error of judgment which have combined to bring about financial collapse. Now and again, of course, we read of someone who has wantonly and wickedly spent beyond his means, thus finding his way into the Bankruptcy Court in Carey Street, just behind the Law Courts, where all London bankruptcies are dealt with, or into one or other of the County Courts which deal with bankruptcies outside the London area.

One is apt to ignore the Bankruptcy Court as a court of justice, yet it is essentially one in the fullest sense of the term. Bankruptcy is not merely a word to denote insolvency and inability to pay just debts. It is a legal term with legal implications and effects.

At one time bankruptcy was virtually treated as a crime. It was dealt with by the common law courts and in the King's Bench Courts. And there are still criminal offences in connection with the bankruptcy laws. For example it is a crime for any person who has been adjudged by the Court to be bankrupt, to obtain credit for any amount over £10 without disclosing that he is a bankrupt.

The object of bankruptcy is two fold. To discriminate between

genuine inability to meet obligations and wilful refusal or neglect to do so. And having done this, to secure as far as possible an equitable share of the debtor's assets to each of the creditors, and also to enable the bankrupt to get rid of the crushing burden of debt.

Again, we see equity at work, for it would obviously be against the interests of the community if those creditors who obtained judgment first were able to be paid in full, leaving nothing to be shared out among those who might endeavour to enforce their claims at a later date. Nor is it in the interests of the community that a man should remain for an indefinite period bowed down beneath a load of debt, which may have been incurred through no fault of his own.

Bankruptcy law goes back a long way. The earliest Statute was that of Henry VIII in 1542. It was directed against fraudulent debtors. It gave power to the Lord Chancellor and other high officers to seize estates and other assets and divide them among the person's creditors. It did not offer him any relief from his debts after this had been done, so that he was still in debt.

Subsequently this principle was modified by legislation, and it was provided that if the debtor conformed to the bankruptcy laws he could eventually obtain his discharge with or without the consent of his creditors.

In earlier days the Bankruptcy Courts consisted of Commissioners appointed by the Lord Chancellor, and it was these worthies who administered the laws.

In 1831 a new Bankruptcy Court was built by William IV, a year after that great legal reformer Lord Brougham became Lord Chancellor; and from that time onward succeeding legislation has made the path of the debtor less unpleasant. The Debtor's Act of 1869 abolished that grave evil, imprisonment for debt; but neither that Act nor any other passed since, offers any protection to the fraudulent bankrupt, and the law still reaches out a long arm to rascals who secure property which should go to creditors, or who attempt to destroy documents or accounts.

Since the Act of 1869 the bankruptcy laws are administered by two Chancery Division Judges who, assisted by registrars to handle routine procedure, deal with all London petitions. In the country areas it is the County Court Judges who deal with bankruptcy matters.

CHAPTER SIXTEEN

THE LAW COURTS

THE introduction of the Judicature Act of 1873, and the subsequent centralisation of the courts of law, was probably the most important and far-reaching development in the English legal system.

As we have seen, the Act of 1873 (it came into force in 1875) merged the three Common Law Courts, Queen's Bench, Common Pleas, and Exchequer together in the Queen's Bench Division. It is now the King's Bench Division. The Court of Chancery became the Chancery Division; the courts of Probate, Divorce and Admiralty were welded together into the Probate Divorce and Admiralty Division. As Mr Carter says in his *History of English Legal Institutions*: "By the Act of 1873 and the Acts modifying or supplementing it, all these courts were united and consolidated together and constituted one Supreme Court of Judicature in England."

This Act revolutionised the *administration* of the laws and remodelled the entire judicial system of the land. It removed the anomaly of various courts recognising different principles and carrying out different procedure in applying the law; it established that Law and Equity could be administered by every Judge in every court. Remedies which up till then had been obtainable only from one particular court could now be obtained in any Division.

The climax to this reorganisation was the removal of these Divisions to the newly-built Law Courts at Temple Bar, in the Strand, in 1882.

It may be asked why the Royal Courts of Justice were moved from Westminster to the Strand. Again we have to hark back to Saxon and Norman times, when the Palace of Westminster was the home of kings and also the home of the courts in which, in theory at least, they were the dispensers of justice.

You will recall how William Rufus built Westminster Hall when he found it inconvenient for his Royal Palace to be used for the work of the courts. As the legal system developed into what might be called a science, legal education was required, and I have already shown how this was organised by the Inns of Court. There, gentlemen of the long robe carried on their studies, and there they lived in the various squares and courts near Lincoln's Inn and the Temple.

Apart from the courts at Westminster, there were other courts which sat at other places at various times; there was, for example, Doctor's Commons, which was held near St Paul's Cathedral, with an odd court or two in Lincoln's Inn and Chancery Lane. This geographical distribution of Courts became more and more inconvenient as time went on and the populations grew. Litigation increased in proportion, and there arose the need for concentration. And, as we have seen throughout the story of the courts, when the need arose it was almost invariably satisfied.

That is precisely what happened with the Law Courts; but the transfer from Westminster to Temple Bar did not take place without the usual outcry and wrangle between people of divergent views. Murmurs for and against were deep if not loud, but in general the feeling was that it would be to the advantage of litigants and lawyers alike if the courts were centralised.

With this idea in view, as far back as 1841 Sir Charles Barry prepared an elaborate design for a building in Lincoln's Inn Fields. It was of Grecian design, and was to have had a huge central chamber as large as that of Westminster Hall with 12 courts leading off from it. Funds were not forthcoming, however, and it was not till 1858 that Queen Victoria ordered a Royal Commission to be set up "for the purpose of enquiring and reporting on the expediency of bringing into one place, or at all events into one neighbourhood all the Superior Courts of Law and Equity, the Divorce and Probate Court, and those of the Admiralty and Bankruptcy."

The Commission sat, and in 1861 a Bill was introduced into Parliament to put its recommendations into practice. The Bill was thrown out; it was not until 1865 that two other Bills, authorising the building of the new Law Courts, became law.

But even so, the birth pangs of this new institution were not ended. All through the years there had been controversy about the site of the new courts. Letters to *The Times* were written, one in particular, in 1854, protesting that "If the Courts must be moved from Westminster, give us quiet, space, air and light. . . . The never ending noise of the Strand is insufferable. It will mean clerks must fight their way across a thoroughfare eighty feet wide at no little risk to life and limb."

Other sites were suggested. Lincoln's Inn Fields, it was urged, would offer "the degree of repose indispensable to the functions and dignity of a Court of Justice". The Thames Embankment, on a site next to Somerset House, was another suggestion. And then, when at length the design of George Edmund Street, R.A., had been approved

by the Commissioner of Works, there were further outbursts of criticism and protest. One expert described it as "an artistic inferno and national disgrace". Another, in even more satirical vein, declared that "Grandeur or magnificence is merely impertinence . . . Inevitably the association of courts of law seems to be rather with lunatic asylums and debtors' prisons than with palaces and temples; and, taking a middle position between the two groups, a style neither grandiose nor mean, splendid nor sad, but a happy medium of decent plainness, seems to be most satisfactory and proper."

But in spite of all protests the site on which the Law Courts now stand was bought in 1866 for £1,453,000. It may be a comforting thought in these days of high taxation to know that it was bought with money from the unclaimed funds in Chancery, which the Government of that day appropriated for the purpose in 1865, and not, therefore, out of the taxpayers' pockets.

It is almost a truism that no public good can be achieved without some private inconvenience and hardship, and it was so with the Law Courts. Over four thousand people were driven from their homes when this site was cleared. Yet who can say that the pulling down of Yates Court, with its six small houses in which lived no fewer than 48 families with over 150 children, besides adults, was not for the ultimate good of the community?

One can, however, feel a twinge of sadness at the passing of the Kit Kat Club in Shire Lane, which had been founded about 1700 by 39 noblemen intent on the Protestant succession in the House of Hanover; and for the destruction of such historic inns as The Griffin and The Bible. But one cannot mourn the pulling down of the cheap and smelly lodging houses and places of bad repute, which were illumined by the brazen lights of the gin palaces that flaunted themselves in these narrow, dark slums.

But even with the passing of the design, the travail of the Law Courts was not over. It continued throughout the 12 years they were under construction. It was six years before the foundations were begun and another six before the courts were completed.

Mr Bull, of Southampton, was the contractor selected to carry out the building, and he was beaten down to the last penny on the cost. When he was about half way with the construction, the stonemasons struck for an extra penny an hour, 10d instead of 9d; this upset his calculations, as he had specified to complete the building by a certain time.

Being a resourceful sort of man, he sent agents abroad to bring back other workmen. In due course there arrived some 300 men from

all parts of the Continent, and even from America and Canada.

As one might well expect, there were loud protests on the part of the stonemasons here who were thus frustrated in their demands for extra pay. On more than one occasion there were free fights between the "home" masons and those imported from abroad.

Mr Bull, seeking to avoid trouble, partitioned off one part of the building as a sort of dormitory, furnished it with beds, and instituted a canteen and a club; here, for several months, the foreigners lived, working during the day and taking advantage of such amenities as had been provided by the thoughtful Mr Bull, at night.

But that did not appeal to the strikers, who sent a deputation to the First Commissioner of Works protesting that the Law Courts were being used as a "common lodging house". Fortunately the trouble was settled in an amicable manner, and both home and imported workers joined hands in completing this building, most of which is of Gothic design.

And what of Mr Street and Mr Bull, when at length this modern monument to the judicial life of England was finished?

Mr Street, alas, did not live to see the completion of his most ambitious work. Worn out and mentally exasperated by the 14 years of worry which had been his lot in the execution of his design, in despair at the lack of imagination on the part of a First Commissioner of Works whose concern was with costs and not architecture, Street broke down beneath the strain. A year before Queen Victoria opened the new Courts of Justice in December 1882, he died.

Meanwhile Mr Bull had been waging war against the Government for payment. In December 1882 he had not even been paid for the eastern part of the building which he had completed in 1878, five years before. In 1888 he was still trying to get payment for the completed building, the Government disputing his claim because he had not finished it within the stipulated time.

So far as Mr Bull is concerned, we may well say that the building of the Law Courts was a professional triumph but it was equally a financial disaster, for friends had to come to his assistance pending the settlement of the bill.

But the work of Mr Street and Mr Bull has been immortalised in two life-like figures which adorn the Judges' Entrance in Carey Street. Over the doorway one can see the stone figures, one holding a plan, the other a hod and trowel.

There are more than the courts themselves in this building. Most people, other than litigants and lawyers, who have entered it, have

only seen the beautiful central Hall with its wonderful mosaic floor and stone-vaulted ceiling. They know nothing of the two-and-a-half miles of corridors which thread the building like a maze, leading to the thousand odd rooms and courts where Judges and officials of the Law Courts carry out their daily tasks.

They do not know that the great stone pillars round which the circular staircases wind from the big hall to the first floor, where the courts of the King's Bench and Chancery Divisions are situated, are hollow and contain a narrow circular staircase connecting the court corridor with the public gallery corridor, on the second floor.

Nor are they aware that for years there could be seen the remains of a blacksmith's forge where the damaged lances and armour of the Knights Templars of old, who held their tournaments nearby, were repaired. There is a blacksmith's shop still in the basement of the Courts to-day, which is kept busy on the running repairs of the building.

Visitors would be surprised if told that the well-worn stone near to the Judge's Entrance was where his Lordship used to stand to mount his horse.

When the Courts were built they were intended for civil actions, and it was not until the institution of the Court of Criminal Appeal, in 1908, that it was found necessary to find accommodation for those who were appellants to this court.

Such appeals are always heard in the wide and spacious Court of the Lord Chief Justice, although he does not always preside over them. Suitable accommodation for convicted prisoners was only provided in the way of cells. But not until 1928 was it discovered that beneath the linoleum in the corridor outside the cells was an unfastened trap door through which any enterprising prisoner could have dropped into a tunnel, and made good his escape through the engineers' shop and into the Strand.

Having gained this brief idea of the history of the Law Courts, let us turn to a study of the various courts which find their home in the great building.

CHAPTER SEVENTEEN

THE DIVORCE COURT

AS I pointed out in the last chapter, when the Royal Courts of Justice were removed from Westminster to the Strand a change had already taken place in the constitution of the courts.

Old courts had faded out of the picture and new courts had been painted in. Among them were the Courts of Divorce, Probate and Admiralty, with which I propose to deal in the chapters to follow.

Just as the Courts of Common Pleas and Exchequer had become merged into the King's Bench Division, so were the several overlapping appeal courts of the Exchequer Chamber (common law appeals), Lords Justices in Chancery (Chancery appeals), Appellate jurisdiction of the Privy Council in matters of Lunacy and Admiralty cases, and other appellate judicial bodies, merged into one general Court of Appeal.

These were now in the building at Temple Bar and thither came litigants from all parts of the country to seek the Queen's (or King's) justice.

In the previous chapter I said that the Judicature Act of 1873 revolutionised the administration of the Law. The Divorce Court gives us an ideal example of this. It was one of the entirely new courts whose institution marked the abolition of the jurisdiction of the old Ecclesiastical Courts in matrimonial matters, leaving them with urisdiction in matters affecting the church and clergy only.

Before this, from early Saxon times right up to the passing of the Matrimonial Causes Act of 1857, these Ecclesiastical Courts, sometimes called Courts Christian, wielded a tremendous power over the legal as well as the religious life of the community.

Sir Henry Slesser in *The Law* tells us:

> "Matters concerning marriage; its celebration and dissolution, and questions of capacity to marry, and legitimacy, all fell within the jurisdiction of the Ecclesiastical Courts and the common law did not seek to prohibit the Courts Christian from dealing with such matters. From the twelfth century until 1857, the Ecclesiastical Courts continued to possess this privilege. In the matter of divorce, though a marriage could be pronounced void *ab*

initio and a decree of nullity secured, a valid marriage was held to be indissoluble; though a divorce from bed and board, not entitling the divorced person to be married again, could be granted."

But the judicial powers of these courts were not confined to matrimonial affairs. They exercised jurisdiction over questions of wills and intestacies, and in fact all matters dealing with probate. Apart from the canonical laws of the Church they also administered secular law. For the Bishop, you will recall, was a secular as well as a spiritual lord, who held a recognised place in the Witan of old, and in the Hundred and County Courts of early days. He sat with the Bailiffs and the Sheriffs, and tried cases of a mixed nature, offences which could be punished by both civil and ecclesiastical penalties. In addition he had his own Court, the Court of Bishop, as it was called.

It is essential that we should have some idea of the functions of the Ecclesiastical Courts if we would understand how the Divorce and Probate Courts evolved from them as a matter of necessity. Like all other courts they were, all through their history, avid and covetous of power.

Mr Alfred Marks in *Tyburn Tree, its History and Annals*, describes how in the grants of franchises to monasteries *infangethef* and *utfangethef* (the right to try and hang criminals) was conceded. After mentioning that at the end of the thirteenth century there were no fewer than fifteen gallows in the hundred of Newbury alone "mostly belonging to religions" he goes on to say, "Among them we find one belonging to a prioress, a not uncommon case. It is distressing to think that Chaucer's tender-hearted prioress who 'wolde weepe if that sche sawe a mous caught in a trappe, if it were dead or bledde' had a gallows on which—by the hands of her bailiffs—she hanged thieves . . .?"

You will observe the reference to the bailiff, for it would not have done for so holy a woman to have stained her hands with the blood of a fellow creature. And in this abstention from "blood guiltiness", which exists up to this day, there was something of an anomaly. As a lord of the manor the Abbot of a monastery would be called upon to hang felons, by substitute; as an ecclesiastic he would be expected to give sanctuary to thieves. This is set out in a charter bestowed upon Glastonbury Abbey in the reign of Edgar, 958–975, in which he grants the right of trying and hanging thieves, but also insists that if the Abbot or any of his monks should meet a thief being taken to the gallows, he can hold up the execution.

There is on record, too, the account of how one Gilbert Plumpton, in 1184, was just about to be swung off with the rope actually round his neck when a worthy bishop passed by and threatened the executioners with excommunication if they did not free the man.

Thus the powers of the cleric were very great in those ancient days, and they were reflected in his courts. Some sort of system was evolved as time went on and the kingdom was divided into provinces, dioceses, archdeaconries, and rural deaneries.

The Archbishops of Canterbury and York presided over their own particular provinces in what were called Provincial Courts. The Bishop presided over the Diocesan Court, while the Archdeacons were at first largely executive in connection with church matters. Later on, however, by means of usurpation, and on coming to terms with the Bishops to take over some of their jurisdiction, they gradually extended their judicial powers. There were all sorts of spiritual courts from the Court of Arches to the Court of Peculiars.

It would be impossible within the space of this chapter to go into all the work of the Ecclesiastical Courts, and it will be better to give one or two examples to show how they functioned.

In a summary of cases heard before the London Consistory Court between 1480 and 1639, Archdeacon Hale mentions the following list of offences dealt with: fornication, adultery, incest, bigamy, rape, sorcery, unseemly demeanour in church, absence from church, the marital relations, haunting taverns and keeping bad company, defamation, tale-bearing, practising as a surgeon or midwife without licence, vexatious prosecution, not living in charity, and fox hunting and fowling on Sunday.

But we can go back much farther than that, to the year 1222 when "A Prouinciall councell was holden at Oxforde by Stephen Langton, Archbyshoppe of Canterburie and his suffragane bishops and others. . . ."

The story tells of a young man and two women who were brought before this council because "the yoong man would not come in any church nor be partaker of the Sacraments, but had suffered himselfe to be crucified, in whom the scars of all ye wounds were to be seene, in his hands, head, side and feete, and he rejoyced to bee called Jesus of these women and other. One of the women being olde was accused of bewitching the young man unto such madnes, and also (altering her owne name) procured her selfe to bee called Mary mother of Christ. They being conuict of these crimes and other, were adiudged to bee closed up betweene two walles of stone where they ended their liues in misery. . . . The other woman being sister to the

young man was let goe, because shee reuealed the wicked fact.''

Ecclesiastics were jealous that their rights should not be encroached upon or their courts flouted. An instance of this occurred in 1249 when a thief was caught on the land of the Abbot of Tewkesbury, and haled before the court of the Earl of Gloucester. He was tried and hanged, whereupon the Abbot was mightily incensed and protested in no unmeasured tones that the franchise of his church had been invaded.

Master William Thorpe, Priest, was a man of unwavering principle. In 1407 he appeared before Dr Thomas Arundel, Archbishop of Canterbury and Lord Chancellor of England, on a charge of heresy. He boldly refused to ''renounce his Errors'' which consisted of declaring he held that ''the Bread after Consecration remained Bread, that no body ought to kneel or worship before an image; that Pilgrimages in which People wasted their substance in Taverns and Inns and upon lewd Women could not be pleasing to God.''

The Archbishop advised the prisoner to submit himself to the Holy Church, and on his refusal threatened to lay him in irons and have him burnt by the Civil Power. Salmon, in his *State Trials*, comments on the practice in such cases as follows: ''He (Thorpe) was first dealt with in a friendly manner to renounce his Errors; which, if he refused he was to be laid in heavy irons, used hardly, and sometimes put to the Torture. . . .''

But once more we do not know the end of the case.

The story of Jane Shore, who at 16 became the bride of a Lombard Street banker and goldsmith, has often been told by historians, poets and story tellers. But I wonder how many people know that her ultimate descent from the Courts of Kings to the squalor of poor lodgings, and from the enjoyment of immeasurable wealth to poverty, was brought about by an Ecclesiastical Court in 1483?

It is a story not without its tinge of sadness, for Jane was a gentlewoman in every sense of the word, a girl of infinite charm. She was able to do what few ladies could do at that time, read and write.

When she married William Shore in 1463, she little dreamed that before many years had passed she would be one of the most talked about and envied young women of the day. Until 1470 she was a devoted wife. Then Edward IV, who had returned from his exile in France, killed and defeated his cousin the Earl of Warwick, and regained the throne, was attracted to her. She left her husband to take her place as one of Edward's mistresses; her beauty, wit and general charm caused her to be one of the most popular women at Court.

Edward heaped presents of money and jewels upon her. In 1483 he died. Richard III lost no time in removing those whom he thought might be in his way. He was ruthless in his crusade of murder, and Jane Shore might count herself lucky to have escaped any more serious charge than sorcery and witchcraft. Fortunately for her the charges could not be sustained, but Richard was determined to crush the woman who had for so long comforted his brother. First he took away all her property. Then he had her brought before the Ecclesiastical Court and tried for "incontinence". She was found Guilty and had to do penance in the streets of London. Rowe, poet and playwright, has described this episode:

Submissive, sad and lonely was her look;
A burning taper in her hand she bore;
And on her shoulders, carelessly confused,
With loose neglect her lovely tresses hung.
Upon her cheek a faintish flush was spread;
While, barefoot as she trod the flinty pavement,
Her footsteps all along were marked with blood.
Yet silent still she passed, and unrepining;
Her streaming eyes bent ever on the earth,
Except when, in some bitter pang of sorrow,
To heaven, she seemed, in fervent zeal to raise,
And beg that mercy man denied her here."

So Jane lived out her sorry life in poverty for nearly fifty years. She died about 1533 aged 86.

Nearly four hundred years after Jane Shore had appeared before an Ecclesiastical Court, another Royal favourite was respondent in a divorce action in the London Consistory Court.

This was the notoriously beautiful Lola Montez, who counted among her lovers the Emperor Nicolas of Russia, the great Alexandre Dumas, who fought a duel over her, and the elderly Ludwig I of Bavaria, who lost his throne over her.

Lola was no Spanish senorita, as she would have had one believe, but was of Irish descent. In 1837, when she was 16, she was married to Lieutenant Thomas James of a Bengal regiment who took her back to India with him. The romance did not last long, and Lola returned to England. On the voyage she met a cavalry captain named Lennox. At home she stayed with him at various places, until she received notice that her husband was suing for a divorce in the Consistory Court on the grounds of her "criminal conversation", as it was termed at that time, with the captain. That gentleman left

Lola, who decided that she would simply ignore the summons to attend the court. In her absence the case went against her, and a decree *a mensa et a thore* (a separation from bed and board) was granted the husband, which amounted to no more than a judicial separation.

The procedure to obtain a full divorce before 1857, was very involved. After gaining this judicial separation, in order to remarry an approach had to be made to the Proctor of the Consistory Court for his sanction to apply to Parliament where a Private Bill would have to be passed before complete freedom was possible.

But this gave little concern to Lola Montez, who went from lover to lover with startling abandon. Her unfortunate husband was never able to gain his freedom.

In the Battersea Gardens at the Festival of Britain there was a statue of the Madonna and Child wrought in marble. This huge figure, some six feet in height, and weighing a ton, was the work of a German-born sculptor, but a naturalised Englishman, Heinz Henghes, a teacher of carving at the Royal College of Arts.

Early in 1951 this figure was the subject of a case heard before the Consistory Court at Southwark when three ladies, Miss W. M. Jones, Miss A. Graves and a Mrs Marion Entwistle, opposed the application of the Rev Brian Dupree, vicar of St Mary-le-Park, Battersea, to put the statue in his church before its removal to Battersea Gardens, for the festival.

The Court was presided over by the Chancellor of the Diocese, Mr Emlyn Garth Moore, who listened while the three ladies (out of 7,000 parishioners) voiced their objections to the introduction of the statue into their church.

"The statue is un-Christian," declared Mrs Entwistle, adding, "I felt a physical revulsion when I saw it."

Said Miss Graves: "It is quite blasphemous and will split the parish."

Miss Jones was equally forthright in her denunciation. "The statue absolutely revolts me. It misrepresents the form of Our Lady. It is revolting, gross, blasphemous and not normal."

The Chancellor inspected the offending statuary, and after considering it from all angles, he announced: "I do not see anything obscene in it," and granted the vicar permission to install it in his church.

Mr Geldart in *Elements of English Law* summarises the waning power of the Ecclesiastical Courts from the Conquest onwards when the Church Courts separated from the Lay Courts; although, as he

puts it: "In spite of this they acquired and kept for themselves a large sphere of jurisdiction."

He then goes on:

> "Their exclusive claim to punish clergymen for ordinary offences has long disappeared; the power to try and punish laymen for immorality has become practically obsolete; their jurisdiction over matters of ritual, and ecclesiastical offences such as heresy, still remains and is still exercised by them. In the struggle between them and the King's Courts for jurisdiction over ecclesiastical property—the right to present a clergyman to a living, for instance—the King's Courts were successful at an early time in getting and keeping the jurisdiction in their own hands. But in two matters which concern primarily what we should consider the rights of everyone, the Church Courts long retained their jurisdiction; the disposition of the goods of the dead, and questions of marriage and divorce."

At this point we may turn to the Divorce Court, and endeavour to trace how it arose out of the increasing complexities of social life.

There is scriptural authority for divorce, both in the Mosaic law as set out in Deuteronomy 24.1. and in Matthew 5. 31, 32, where Christ, during His Sermon on the Mount mentions fornication as a sufficient cause to "put away his wife".

Certainly divorce was practised in Rome as early as 234 B.C.

In Saxon times divorce was recognised either on account of a wife's infidelity or her desertion. It was probably obtained by mutual consent. In those days the laws against sexual immorality were more rigorous than they are to-day. By a law of Canute a woman who committed adultery might have both her ears and her nose cut off.

The causes of and reasons for unhappy marriages were probably very much the same years ago as they are to-day—with one notable omission. Now, men and women are given the opportunity to make their own choice of husband or wife. A wrong choice, immature judgment, may have sad results . . . at least the choice is free.

But up to the 17th century, child marriages were common in Britain.

In the records of the Diocesan Registry at Chester during the 16th century, Dr Furnival found no fewer than 27 cases where persons came to the court to have annulled marriages which they had entered into as children. These applications came not from men and women of high estate, but from the middle classes of that age.

In 1564, for example, John Summerfield aged three was married to Jane Brerton aged two, the bridegroom being carried to the altar in his uncle's arms and held there "while the words of matrimony were in speaking".

The object of such marriages is hard to fathom but the readiness of the Church to carry them out is even more difficult to understand.

John Lord Decies was eight years of age and Katherine Kathleen Fitzgerald was twelve, when the Archbishop of Canterbury, solemnly and with all ceremonial, made these children "man and wife" in the year 1673. Is it any wonder that the "bride" on reaching the mature age of 14 should run off and marry Edward Villiers in spite of the orders issued against her by the Court of Arches?

One such case was brought before the House of Lords in order to clarify the legal position.

It was that of Sir George Downing and Mary Forester who were married when they were 15 and 13 respectively. George, who was sent abroad for four years, came back without any romantic leanings towards his wife, who was equally averse to going on with the union. A Bill was promoted in the House of Lords to dissolve the marriage. The parties had simply done as they were told it was urged, and had only spoken the words which the priest had commanded them to speak.

But it was of no avail. They were both of the age demanded by the law, 14 for the male and 12 for the female, and were indissolubly married.

This readiness to carry out these travesties of what the church claimed to be a sacrament is equalled only by the subtlety with which the theologists devised exceptions to the rule that a genuine marriage could not be dissolved under canon law as it existed on the eve of the Reformation in the 16th century. I have already mentioned the divorce *a mensa et a thoro*. There was also a divorce *a vinculo* which annulled a marriage on various grounds of impediment. During the Middle Ages this means of gaining matrimonial freedom was exploited by those with the means to pay the Ecclesiastical Courts for finding a way through the tortuous maze of forbidden degrees and other impediments.

Before the Reformation the annulment of alleged false wedlock on the ground of pre-contract or forbidden degrees of affinity, spiritual relationship, consanguinity, or some other canonical pretext, became a scandal. Even that matrimonial authority, Henry VIII, was driven to give his authority to a Statute in which it was complained: "Marriages have been brought into an uncertainty

thereby, that no marriage could be so surely knit or bounden but it should lie in either of the parties power . . . to prove pre-contract, a kindred and alliance or a carnal knowledge to defeat same."

After the Reformation the conception of marriage was largely shaped by Martin Luther who said: "Marriage is a worldly thing." In those words lay not only the future of civil marriage, but also of its counterpart, civil divorce.

Yet even the most advanced thinkers of the 16th and 17th centuries seem to have appealed to authority rather than to reason and experience in their attempts to solve what was rapidly becoming a great social problem.

No immediate change in the canon law of divorce took place, and even when civil marriage was instituted by the ordinance of 1653, there was no attempt at divorce legislation, and, except by Parliament as I have already stated, full divorce was not granted until 1857.

To-day, jurisdiction is vested solely in the civil courts. I can only briefly summarise the law as it stands. Since 1860 the decree *nisi* has been in force with the right of the King's Proctor to intervene. There is still a decree of "Judicial Separation" with the same force and consequences of the ecclesiastical *a mensa et a thoro*. There is also a magisterial separation order through which protection and maintenance can be obtained. Full divorce is obtainable by either wife or husband for adultery and on other grounds which are statutory and rest on the Matrimonial Causes Act of 1937.

The manifold side issues in the complicated structure of the divorce—nullity, restitution of conjugal rights, presumption of death, legitimacy and judicial separation laws, are beyond the scope of this book.

Up to 1920 all divorce cases were heard in the Divorce Division in London. In that year Parliament provided that matrimonial causes could be heard at Assizes subject to certain rules of court.

Most of the cases which are heard by the Judges in the Divorce Court are prosaic, sordid and dreary; but occasionally there is a case which, because of its circumstances, its setting and the people involved, catches the imagination and becomes a sensational *cause célèbre*.

It is this type of case which invests the Divorce Court with a certain glamour. It may be a spurious glamour, but whether we approve of it or not, there is great public interest in the work of the Divorce Court, particularly when some intriguing *cause célèbre* is down for hearing.

Lack of publicity has in recent years deprived the Divorce Court of much of its former glamour and fascination. Press reports on divorce cases are now severely restricted. Since 1926 no detailed recital of the whole proceedings in any particular case is allowed to be published. Reporting is limited to the names, addresses and occupations of the parties concerned, concise statements of the charges, points of law, the summing-up and the judgment. None of the evidence given on either side in a defended suit, or by the witnesses in an undefended suit, may be given.

If I discuss, as one of my examples of the work of the Divorce Court, one of the more sensational cases it is not that I wish to dwell on this aspect of the Court's work. But as so much of that work is prosaic and dull the choice of less sensational examples would make equally prosaic and dull reading. Moreover, the first case I have selected was heard long before the restriction on the publication of details was in force; it gives me, therefore, an opportunity to show the work of the Court itself in detail.

It is the story of a beautiful girl who rose to fame on the music hall stage after an agonising romantic experience, who eventually became a Countess and added distinction to the aristocracy into which she married.

In 1888 Belle Bilton and her sister Florence, daughters of an ex-soldier at Woolwich, were appearing as the Bilton Sisters at the Alhambra music hall in Leicester Square, London, on the site of which now stands the Odeon Cinema. In the same bill were such world famous stars as Vesta Tilley (late Lady de Frece) and Arthur Roberts. During that engagement Belle Bilton was introduced to a handsome youngster, Alden Carter Weston, with whom she fell in love to her ultimate sorrow and disgrace.

Belle Bilton could have had any one of a score of noble lovers, but she gave her heart to a man who turned out to be a swindler and trickster with no scruples about taking the girl as his mistress. Only when he was arrested for fraud and sentenced at the Old Bailey to imprisonment did the girl realise the immensity of her misfortune. She had no engagements to fulfil; her reputation had been tarnished by her association with her lover, and she was soon to become a mother.

She met a young Jew, Isador Wertheimer, a man of some means living in a fine house in St John's Wood, London. He sent her to his country cottage, provided a doctor and nurse, and after the birth of the child took her to Trouville, in France, for convalescence.

He was careful of her reputation. Although they stayed at the same

hotel they occupied separate rooms, and were registered in their own names. On their return to England Belle Bilton resumed her professional career; both she and her sister lived at Mr Wertheimer's house. He would gladly have married the girl, but she was not anxious for matrimony. One experience of mankind had shattered any illusions she may have had. Mr Wertheimer went abroad to try to forget.

During his absence she visited the famous Corinthian Club in St James's Square, a haunt of the more exclusive Bohemia. It was there that she met Lord Albert Osborne, a godson of King Edward VII who was then Prince of Wales. Lord Albert in turn introduced her to Lord Dunlo, heir to the Earldom of Clancarty. Despite his being a minor, the young nobleman wasted no time in pressing Belle Bilton to marry him; that they were both deeply in love with each other time subsequently proved.

When a report of the marriage was published in the *Pall Mall Gazette* of that day the Earl, who knew nothing of the matter, was incensed. In spite of the pleading of his son, Earl Clancarty insisted that the infatuated youth should take a trip round the world on pain of disinheritance.

Off went his lordship; but, let it be said, during his absence he wrote very loving letters to the girl he left behind, who was still drawing vast audiences wherever she appeared. Despite a letter from George Lewis, the famous lawyer, telling him that he had had Belle Bilton watched and "had no doubt of the guilt of your wife who has been hourly and daily in the company of Mr Isador Wertheimer", his faith was not shaken.

The husband at once wrote back telling his wife what had happened and assuring her that he did not believe a word of it. "Remember Belle," he concluded, "that I always and for ever love you my darling. Thank God we are married. Nobody can part us now."

Nevertheless, he was ultimately prevailed upon to sign the necessary petition for divorce with the result that in 1890, in the recently opened Divorce Court, the action of *Dunlo* v. *Dunlo and Wertheimer* began.

Sir Charles Russell, Q.C., appeared for Lord Dunlo, Mr Frank Lockwood appeared for Lady Dunlo, with Mr Charles Gill for Isador Wertheimer. Society and the world of fashion sat cheek by jowl with stars of the stage. People fought to gain entrance to the court even as they fight and scramble to-day to be present at some dramatic trial. In an outstandingly sensational case, nothing was

more dramatic than the evidence of the petitioner himself when he entered the witness box.

It became clear from the outset that he was an unwilling party to the suit, and that he did not believe any of the charges contained in the petition against his wife. He never had believed them, he told the court, and had only brought the action because his father had insisted.

Such admissions opened the door for Mr Lockwood to ask a number of awkward questions in cross-examination. That great counsel did not fail to take advantage of such an opportunity. Lord Dunlo frankly admitted that his wife had begged him not to leave her, and had written him pathetic letters during his absence asking him to return. Mr Lockwood's questions emphasised Lord Dunlo's unwillingness to bring the suit:

Has she done anything to forfeit your regard, or have you heard anything to her detriment beyond what has been said to you by Messrs Lewis and Mr Robinson?—That is the case.

Did you believe the charges made against your wife?—I did not.

That reply, given in a firm, resonant voice, virtually settled the case so far as the jury were concerned, but Sir Charles Russell had several other witnesses to call who received short shrift at the hands of Mr Lockwood, especially the Earl himself who cut a very poor figure in the witness box.

There followed the following penetrating cross examination:

Did you think that your daughter-in-law might go wrong if left by her husband?—I thought it extremely probable.

Well, did you care if she did go wrong?—Not much.

Did you answer a letter from her begging for an interview in order that she might refute certain rumours? Did you ever give her a chance of meeting the charges against her?—No I did not.

Did you tell your son that if he went back to his wife you would have nothing more to do with him?—I did.

Lady Dunlo made a much better impression on the court. She answered all questions frankly and with the utmost candour. The great Sir Charles Russell could not shake her testimony as she declared that all through her acquaintance with Isador Wertheimer he had never been more than a generous and chivalrous friend. There had never been any misconduct between them. The co-respondent also won the attention of the jury by his earnest denial of anything but the most respectful friendship with Lady Dunlo whom he frankly admitted he would have been proud to marry. Asked why he sought her society after her marriage, his voice rang

through the court as he declared that he knew of her early unhappiness which was a secret between them, and he knew that her husband had been driven away from her. That was why he went to visit her, "because nothing gave me so much pleasure as to be in that lady's society. That's why."

The jury were absent just fifteen minutes before returning a verdict in favour of Lady Dunlo.

"The petition is dismissed with costs," said the President of the Court, Sir James Hannen.

It is pleasant to be able to relate that the young Lord Dunlo returned to his wife in spite of his father's uncompromising hostility. This did not last long, however, for within a few months of the action the Earl died, and Belle Bilton became the Countess Clancarty. She and her husband settled down in Ballinasloe, County Galway, where, during the ideally happy 17 years of their married life, she bore her husband five fine children. Then she contracted a malignant disease which she fought with characteristic courage until her death in 1906, at the age of 36.

Of lighter texture, though fraught with more serious consequences for the parties concerned, was a more recent case in which a Harley Street surgeon, Mr James Crooks, petitioned for a divorce alleging that his wife Irene had committed misconduct with Robert Henry Barnes, a former squadron leader in the R.A.F. Regiment.

Both the wife and Mr Barnes denied the allegations, and the whole case revolved around the significance of twin beds.

According to Commissioner Sir Reginald Sharpe who presided at the hearing, the couple were married in 1921 and there were two daughters of the marriage. Mrs Crooks took up portrait painting, and was engaged on a portrait of Mr Barnes. On April 16, 1947, Mr Barnes and Mrs Crooks met at the galleries where the picture was being shown, and afterwards returned to the flat occupied by Mr and Mrs Crooks. The husband had telephoned to say that he would dine out and then go on to their farm at Ringshall, in Hertfordshire.

Mr Barnes having lost his last 'bus home, it was decided he should stay the night in the flat.

The Commissioner then went on: "The position was that by a careful use of the doors Mrs Crooks was enabled to assume her nightdress with perfect propriety and get into bed, and Mr Barnes cast off his outer garments and robed in the husband's dressing gown.

"They say that she got into bed first in the dark and that he, after

entering the room got into the other bed in the dark, and that not one word was spoken and so they went to sleep."

In the meantime, the husband had changed his mind and was on his way back to the flat, which he reached soon after midnight. He hammered on the door, but there was no response for some time. "Then," said the Judge, "the door of the flat was opened and he saw his wife, as he had expected, and Mr Barnes whom he by no means expected to see. Mrs Crooks had a house dress over her night-dress, and Mr Barnes was fully dressed. Both protested their innocence."

Now for the point of law involved. This is how the commissioner interpreted it.

"In the middle of the twentieth century," he said, "twin beds in a husband and wife's bedroom are indistinguishable from a double bed. They form the matrimonial bed. On that night Mr Barnes occupied the matrimonial bed with Mrs Crooks. She put him into the place that would have been occupied by the husband. I therefore find misconduct proved."

The following figures give a brief idea of the scope of the work of the Divorce Courts. In 1858, a year after the passing of the Matrimonial Causes Bill, 24 people went through the Divorce Court. Seventy years later, in 1928, the total was 3,200. One year later it rose to 4,000 (then the highest figure on record). In 1939 5,500 people were divorced. The sharp increase during those ten years was partly due to Mr (now Sir) A. P. Herbert's Bill in 1937, which added desertion to the grounds for divorce. The figures for 1950 reached more than 50,000.

CHAPTER EIGHTEEN

PROBATE AND ADMIRALTY

THE Court of Probate arose out of the struggle between the Ecclesiastical Courts and the courts of Common Law and Chancery. As Sir Henry Slesser states in *The Law*:

> "The administration of probate is also ecclesiastical in origin. In the middle ages the Ecclesiastical Courts obtained a general jurisdiction over the administration of wills. But both the common law and the Chancery interfered successfully and the Ecclesiastical Courts retained jurisdiction only over grants of probate and administration. In 1857 this power was handed over to a new Court, the Court of Probate, whose Judge, as we have just seen, was also given jurisdiction as Judge in Ordinary in divorce. He received also, the powers of, and became identified with, the Judge of the Court of Admiralty."

So that we may better understand how the Ecclesiastical Courts obtained their power in the matter of wills, the disposition of the goods of the dead, probate, the "proving" of a will to give a valid title to the property of a deceased person; and administration, by which the land and property can be legally dealt with, it is necessary to go back much farther than the middle ages, to the 12th century, when it was the earnest belief of the Church that a substantial part of a man's property should be devoted to the benefit of his soul.

It was expected of him that if he made a will he should not forget to devote a goodly portion of what he left behind for the saying of masses. It was almost regarded as a sin not to do so. The result was that if this matter was overlooked, the Church of that day decided that it ought to remedy the omission and make the provision that the deceased had so lamentably failed to do.

In course of time it became the custom for the Church to assume this jurisdiction, and even if a person was thoughtful enough to make a will—it was sufficient if he merely expressed a wish by word of mouth—it was in the Bishop's Court of that age that the document or wish was "proved", and it was that Court which saw to it that the wishes of the deceased were faithfully carried out by those left behind, the executors of that day.

But supposing the man died intestate, without making a will?

That offered no difficulty to the Church. The Bishop took charge of things, and it was left entirely to his discretion to distribute the property as he thought fit. This, of course, did not always appeal to those who thought that they could have done the work much better themselves.

There was, in fact, such grave discontent in this matter that in 1285 a Statute was introduced which had the effect of seeing that the Bishop, or ecclesiastical superior, who carried out the "administration of the estate", as we should term it to-day, paid all the just debts of the deceased and settled up any other outstanding matters, before distributing the remainder of the dead man's possessions.

Later, in 1357, another Act was passed whereby this same individual was ordered to appoint an administrator of the property from among the relatives of the dead man. It is here, for the first time, that we find the status of the modern executor or administrator legally defined.

To-day, in the event of a person dying intestate, some near relation or approved friend applies for letters of administration which entitle him to deal with the estate of the deceased both real and personal. Even where there is a will, the named executor or executors must obtain these letters of administration with the will attached.

Inevitably disputes arose concerning the disposition of estates from time to time, just as they do to-day. Those who felt that they had a grievance went either to the Common Law courts or to the Ecclesiastical Courts. But neither of those institutions had the machinery for dealing with such abstruse legal matters as the conflicting rights of creditors, or the disputes between legatees and the next of kin.

It is at this point that the Court of Chancery came on the scene, and for centuries it carried on a concurrent jurisdiction with the Ecclesiastical Courts.

It was well equipped for the task of equitably determining not simply the rights of one claimant or creditor, but of maintaining a watchful eye over the rights of all concerned. Hitherto there had been as many Probate Courts as there were Bishops. The distribution of an estate was not governed by one coherent law on the subject, however, but depended on the local customs of the particular diocese in which the deceased person had died.

Two Statutes of Distribution, in 1670 and 1685, did something to codify the distribution of the property of intestate persons, and since that date many other Acts have been passed amending the law in a

variety of ways, and clarifying the position in this matter.

Eventually, as I have stated, in 1857 the jurisdiction in connection with the administration of estates was removed altogether from the Ecclesiastical Courts and vested in the Court of Probate.

The work of this Court is, for the most part, less spectacular than that of other courts. But as we shall see, it does not lack romance or the human touch.

Mr Serjeant Ballantine, in his day one of the most brilliant counsel at the Bar, tells a remarkable story of a probate case in which he appeared on behalf of the next-of-kin of a Mrs Thwaites, very soon after the new court was opened. (Not the present Court in the Strand, bear in mind.) This woman, who died at a very advanced age, left a large fortune. She became obsessed with the idea that she had been chosen by the Saviour to receive Him on His return to earth, and that this event was due to take place within her life-time.

The Serjeant, in his book *Some Experiences of a Barrister's Life*, contrasts the business acumen of this lady with the strange delusions which clouded her mind. Referring to her inheritance of the fortune of her husband, he wrote: "She had administered it with judgment and discretion. She was neither niggardly nor profuse. She was charitable without being reckless, and kept her accounts in perfect order."

He went on to mention her belief that she was to be the bride of Christ on His return to earth and then continued: "She indicated the reality of this belief by making very extensive preparations for His reception, principally in the upholstery line, and there was a great deal of absurdity exhibited in the arrangements she made. Lord Penzance, before whom the case was tried, held that her will was invalid."

The Serjeant expresses a grave doubt as to whether the belief did really fill the mind of this woman to the extent imagined, for he points out: "She sacrificed nothing of personal interest or comfort, and never appeared to undervalue the good things of this world in consequence of the great honour that was in store for her."

Legitimacy cases also come before the Probate Court, for such questions raise the issue of inheritance; and they provide some of the most romantic stories.

Romance is an overworked word, but what could be more genuinely romantic than the claim of Olive Serres, which she made in 1866, less than 10 years after the Court of Probate was opened.

This was the claim of a very beautiful woman to be included in

the British Royal Family. The plaintiff declared herself to be the Princess Olive, lineal descendant of H.R.H. the Duke of Cumberland.

On her behalf it was stated that the Duke, son of George II, had been lawfully married to one Olive Wilmot in the year 1767. A great deal depended upon this year, because it was prior to the Royal Marriage Act of 1772. The story was that the marriage had been performed at the house of Lord Archer in Grosvenor Square, London, and that the ceremony was carried out by the bride's father, the Rev James Wilmot, D.D.

Documents of the most convincing character were produced before the court. There were certificates signed by the King and the Earl of Chatham, by Lord Brook the Solicitor-General and others. It was also stated that Dr Wilmot had officiated in other clandestine royal marriages.

This was not new evidence, as it had been produced in court many years before, when, on the death of the Duke of Cumberland in 1790, "Olive, Princess of Cumberland" herself brought a claim in the courts. But this time, in 1866, there was a difference. Handwriting experts appeared in court. After an examination of the various signatures on the documents they pronounced them to be genuine.

Unfortunately for Olive Serres, daughter of the "Princess" referred to above, the weight of evidence was considered to be against her claim, which was dismissed.

On my reading of this trial, I think she must have lost her case in any event, because of the passing of the Royal Marriage Act to which I have referred.

The legal position was this. If the first royal marriage had been declared valid, which it was not, then the mother of Olive Serres would have been a royal princess. As such, she could not have contracted a marriage with a commoner after the passage of the Act. But she did!

After her husband died, in 1790, she married the man named Serres, and it was by him that she had the girl child who brought the claim for legitimacy in 1866. Thus if the mother's marriage to the Duke was valid, her marriage to Mr Serres must have been illegal so that Olive would be illegitimate, whereas if the marriage to the Duke was invalid, as had already been found in law, Olive was equally well disposed of as a claimant.

In 1910 there was another sensational case concerning the Barony of Sackville, and the ownership of Knole House, that noble house of the Sackville family, in Kent.

Only a few months before the case opened, Major Lionel Sackville-

West had inherited the barony of his bachelor uncle, the 81-year-old Lord Sackville. Now came one Henry Sackville-West asking the Probate Court to declare that he, and not the Major, was the lawful heir to the peerage.

That great and picturesque King's Counsel, Sir Edward Clarke, appeared for the claimant, and it was he who in mellow conversational tones unfolded the story of the second Lord Sackville's one great romance.

It was in the days of his youth when, as Mr Sackville-West, he went out to Spain as a junior attaché to the Embassy there. At that time a wonderful singer and dancer, Pepita de Oliva, was the idol of Madrid. Her fame was world-wide. She came to London and took the city by storm when she appeared at Her Majesty's Theatre. Her real name was Josephine Duran de Ortega.

Sir Edward told the Court that this woman, who died in 1871, was the lawful wife of the second Lord Sackville, and the mother in legitimate wedlock of the claimant, Henry Sackville-West.

His evidence did not consist of mere tittle-tattle and gossip, declared counsel, but was contained in sworn documents in which Lord Sackville confessed before the world his marriage to Pepita. This woman had borne him six children. Three had survived, two girls and the present claimant. One of the girls, Victoria Josephine, had married her cousin, the then Lord Sackville.

The archives of the Continent had been ransacked for the birth certificates of the children, and without exception it was found that they had been entered as the offspring of "Lionel Sackville-West and his wife Josephine de Ortega". The present claimant, Sir Edward stated, had been christened at the Church of Notre Dame, Bordeaux, where Pepita had a summer villa, with no less a personage than the Duke of Saxe-Coburg Gotha for his godfather.

Witnesses followed and told of how this ideally happy couple lived openly as man and wife, and everybody thought they were married. Letters were produced, written by the dead man on the death of Pepita, mourning the loss of his wife.

Such was the case presented by Sir Edward Clarke.

Sir Robert Finlay, K.C., rose to his feet. There was a sharp intake of breath, as, at the very outset, he stated that he was going to prove that before ever she met young Sackville-West, Pepita was lawfully married to a Spaniard, a dancing master in Madrid, Juan Antonia de Oliva; and that, although long separated from his wife, de Oliva had actually survived her, so that during the whole time that the English peer and Pepita were passing as man and wife in France,

Germany and Spain, she was actually married to her dancing Don Juan.

Sir John Bigham, the presiding Judge, took a careful note of this staggering opening. Suddenly the hush that had descended on the court was broken by the loud voice of the claimant himself. He brushed aside Sir Edward Clarke and demanded the adjournment of the trial so that he could bring fresh evidence from Spain.

The Judge calmed the storm. Sir Edward Clarke rose and hitched his gown about his shoulders.

"With your Lordship's permission," he said, "I will retire from the case."

He could do no other. There was no adjournment, and at the end of the hearing the learned Judge was compelled to say that on all the evidence before him he found that Pepita was legally married to de Oliva, that there had been no divorce and that the husband had survived his faithless wife.

Legitimacy claims are, of course, only part of the work of the Probate Court. A large part of its other duties involves the settling of complicated claims to estates and the disputes over wills.

But let me turn now to the third member of this legal trinity, the Admiralty Court. The word Admiralty suggests vessels and reminds me that the work of these three courts, Divorce, Probate, and Admiralty—which were merged by the Judicature Act of 1873—has been summarised humourously as: "bad wives, bad wills, bad vessels."

England is rightly proud of the fact that her justice is the envy and admiration of the world; and there is no better example of this than the Court of Admiralty.

Into this court come men from all nations of the world whenever any trouble befalls any ship on the Seven Seas, or any disputes arise. So wide is the fame of British justice as administered in this least spectacular of all courts, that foreign ship-owners will wait months for their ship to reach England so that their case can be heard in the Court of Admiralty.

An Italian ship, for example, fell foul of bad weather and was disabled. Her SOS was answered by the captain of a German ship.

"How much will you charge to tow me to the Azores?" queried the skipper of the Italian vessel.

"I'm content to leave that to the Admiralty Court," was the reply.

That was good enough. Both men knew that only the *English* Admiralty Court could be meant, for it is that court in the Strand to which all seafaring men throughout the world turn their eyes when

they seek unswerving, incorruptible justice. It is an *international* court in the fullest sense of the word.

The figure of Justice may mount guard over the Old Bailey a few hundred yards away to the East. The shining Sword of Justice may hang upon the wall behind the head of the Judge in No 1 Court there. But the Court of Admiralty is not without its symbol of impartiality; for, above the head of the President, there hangs an anchor known all over the world as a token of swift and painstaking justice to all who enter the portals of this court.

Towards the end of 1924 a Spanish steamer, the *Reina Victoria Eugenia* collided with a Norwegian vessel, the *Terrier*. The Spanish ship was insured in France, and the collision took place in the River Plate.

But it was to the Court of Admiralty in the Strand that the parties brought their case for trial. Imagine the enormous amount of work entailed in ensuring that the various witnesses on either side should be available in London at the proper time. Observe also how the court endeavoured to mete out quick justice. Realising the inconvenience, not to mention the cost, of keeping witnesses in England until the case came on, the learned President put this case first in the list, displacing one in which both parties concerned were English, and thus expedited the hearing.

How did this court arise? What were the conditions that brought it into being?

It is by no means a modern institution. In fact the reports of the Court of Admiralty go back to the year 1390, since when our English maritime laws have been built up on precedent and tradition, like any other of our laws. Of course there were courts with a maritime jurisdiction long before this time. You will remember that in the chapter on the County Court, I dealt with the Court of Pie Powder and quoted a passage from the Doomsday of Ipswich drawn up in 1291, which referred to "the plees yoven to the law maryne, that is to wite, for straunge marynerys passaunt", which shows that "the law maryne" was already well established.

An example of how even the early maritime courts struggled and fought with other courts for power is the early case in 1296–7 of Robert de Benso and William Crake, referred to by R. G. Marsden in his *Select Pleas in the Court of Admiralty*.

This was an action for "seizing a ship at sea", and was brought in the Court of Common Pleas. Counsel for the defendant (Crake) argued, however, that the court had no jurisdiction in this matter because, "there is assigned on behalf of the King upon the sea an

Admiral to hear and determine matters upon the sea, and we suppose not you are minded to curtail their jurisdiction.''

To which Judge Beresford jealously replied: ''We have general power throughout the whole of England, but of the power of the Admirals of whom you speak we know nothing. Nor are we minded to yield any of our power if it be not done so by command of the King of which you show nothing.''

Many of the early maritime courts were local, such as the Court of the Cinque Ports, and the Seaport Courts of Ipswich and Padstow to mention one or two. And, as in early days common law courts were held in sundry places, so were these early Admiralty Courts held in all manner of quaint spots. That of Lydd, for example, used to be held on the open sea shore.

As for the word Admiral, the first mention we have of the title in England was when Gervase Alard was made Admiral of the Cinque Ports in 1300. In the reign of Edward I, 1272–1307, there is mention in the Vascon Roll of the appointment of an Admiral of ''the Baion fleet''.

Admiralty Courts as such did not appear until about the middle of the 14th century, and Mr Carter aptly summarises the cause of their origin in his *History of English Legal Institutions* when he says:

> ''They arose in consequence, it is said, of the difficulties experienced by us in dealing with piracy or 'spoil' claims by or against foreign sovereigns. . . . Our courts of common law when the plaintiff was a foreigner seem to have given no redress.
>
> ''The matter was brought prominently before the notice of Edward III when he had to pay out of his own pocket, damages for outrages committed on his allies the Genoese by his own subjects. In 1340 the battle of Sluys, which gave him maritime supremacy and allowed him to assert his claim to be sovereign of the seas, offered him the opportunity of founding an Admiralty Court to keep the King's peace thereon.''

Mr Carter then goes on to point out that during the early part of Edward III's reign Admiralty matters came either before the common law courts, the Chancellor, or the Council. The usual struggle for judicial power developed between the various courts with the result that in the reign of Richard II, 1377–1399, two Statutes were passed, one setting out complaints that the Admirals were holding sessions in ''divers places within and without fran-

chises, impoverishing the common people", the other defining the jurisdiction of the Admiral's Court to the effect that while it must not deal with matters of contract, pleas, quarrels, etc, arising within the body of the country, it *could* take cognizance of the death of a man and of mayhem (maiming) in great ships in the main stream of big rivers, or beneath bridges near the mouth of the river.

The first time a Judge was appointed to the Admiralty Court was in 1482.

Some two centuries after the complaints against the Admirals, in the reign of Richard II, the Admirals took a turn at complaining that the common law courts were encroaching on their preserves. This was in 1570, and Queen Elizabeth immediately wrote off to the Lord Mayor of London telling him that this sort of thing could not be allowed.

Not long afterwards, the Admiralty Court and the common law Judges came to a mutual agreement as to their respective jurisdictions, and it seemed as though the trouble was over. But the rivalry continued. All sorts of ruses were resorted to in order to gain judicial ascendancy, and as Mr Geldart puts it:

> "But the Admiralty Court also suffers from the jealousy of the Common Law. Its criminal jurisdiction is, in the sixteenth century, vested in a set of commissioners who come in practice to be invariably Judges of the Common Law Courts. Its civil jurisdiction was encroached upon, as contracts made and wrongs done abroad or at sea, were brought within the jurisdiction of the ordinary courts by fictions such as that Bordeaux was in Cheapside. Prohibitions were issued to prevent the Admiralty Court dealing with any case that the Common Law Courts could deal with."

The outcome of this struggle was that the Admiralty became more and more limited in its jurisdiction over civil matters, being confined to dealing with actions in connection with salvage or damage by collision at sea. The Long Parliament which championed the cause of the common law against all rivals, took away almost all jurisdiction from the Admiralty.

On the criminal side, it suffered a similar restriction of its judicial powers. Up till 1536 the Admiralty Court had jurisdiction in all cases of crime committed on the high seas by British subjects, or by the crews of British ships whether subjects or not. In 1536, these powers were transferred to Judges of the Common Law Courts.

There they remained until 1834 when this jurisdiction was handed over to the Central Criminal Court where it remains to this day. Under the Central Criminal Court Act of 1834 (Section 22) it is laid down that the Court "has jurisdiction to hear and determine any offences committed or alleged to have been committed on the high seas and other places within the jurisdiction of the Admiralty of England. . . ."

So things went on until 1840 when the first Admiralty Court Acts were passed increasing the jurisdiction of the court in civil cases, and giving it power to enforce its decrees. Meanwhile, the old local maritime courts had been abolished by the Municipal Corporation Act of 1835. Other Acts, including the Merchant Shipping Act of 1854 came into being, followed by another Act in 1861 which gave the Admiralty Court pretty well all the jurisdiction it had been demanding for years.

So we come once more to that vital Act of legislature, the Judicature Act of 1873. By it the Court of Admiralty became merged with the Courts of Probate and Divorce into the Division under that triple title, as we know it to-day.

The machinery of the Admiralty Court differs from any other court both in routine and procedure. In a sense it is an international court inasmuch as it often tries cases in which foreign ships are involved. It cannot be expected that the Judges who try cases, which often require a great deal of nautical knowledge, should have that technical lore at their fingertips.

In a case where the Judge feels that he requires some help, he can call on nautical assessors. One may sometimes see two Elder Brethren of Trinity House sitting on the Bench beside the Judge to assist him in technical matters.

These Brethren are persons of high standing in the country, retired naval officers of high rank—including members of the Royal Family—who can thus decide points of maritime usage and custom, while the judge decides points of Law.

There is no jury in the Court of Admiralty. And with this brief sketch of its origin we will endeavour to see how it has worked throughout the ages.

The theft of ropes, nets or cords from aboard ship was looked upon as a grave crime punishable by death if the value of the ropes, nets or cords, was more than ninepence; a most unpleasant death, too; for, as it was a maritime offence, it was felt that a maritime punishment was merited. The guilty person was haled down to the beach at "low-water mark" and there hanged on a gibbet which

would gradually become submerged with the rise of the tide.

In 1451 the Mayor of Hull, as Admiral of the Court of Humber, called together the "masters, merchants and mariners" who comprised the court and warned them that they must on no account "discover or disclose anything of the King's secret counsel" which might transpire during the hearing of the cases to come before them. If they did . . . "then and there this punishment by the law prescribed shall be executed upon them; that is, their hands and feet bound, their throats cut, their tongues pulled out and their bodies thrown into the sea."

One can only hope those forming that court remembered the old adage that a still tongue makes a wise head.

Piracy, of course, was a heinous offence, and we read how in the 14th century "pirats and robbers by sea are condemned in the court of the admeraltie, and hanged on the shore at lowe water marke, where they are left till three tides haue ouerwashed them."

Not that piracy was always regarded as an abomination and an activity in which no honest man could engage. During the Elizabethan era when the Spanish treasure ships were making their way across the uncharted oceans, our own Drake, Ralegh, Hawkins, Champernowne, and Seymour, all of them knights of noble blood, helped themselves with lavish hands to the ducats, silks, precious stones, silver and seemingly inexhaustible hoards of gold carried by these vessels.

It was dignified by the name of "Prize" in those days, but in fact it was little short of piracy. Anyone under licence from the Crown could fit out a ship and prey upon mercantile trade at sea without hindrance; especially if the vessels captured happened to be French or Spanish.

Pillage, too, was for long years the recognised perquisite of the sailor and everything found above the gun-deck with the exception of "Arms, tackle, furniture and stores", belonged of right to the particular person who *captured* it.

Only very gradually was the taking of "prize" woven into the rules of war at sea as we see them in operation to-day. And it was not till the reign of William and Mary, 1688–1702, that pillage was abolished by an Act of Parliament. Under this Act everything in a ship had to be condemned as a prize and then distributed in the following proportions. One-third to the captors, one-third to the Treasurer of the Navy, and one-third to their Majesties.

When Queen Anne came to the throne in 1702 another change was introduced. The famous Cruisers Act was passed, by which the whole

of the prize was vested in the Crown which then transferred its share by Royal Warrant to those taking part in the capture. This was duly apportioned out in ratio from the Admiral down to the "swabber, ordinary trumpeters, barbers, seamen, volunteers and marine soldiers".

Still later, in the reigns of the Georges, another golden harvest was reaped during the French, Spanish and Seven Years Wars. Some of the fortunes garnered by various Admirals reached fabulous proportions. Admiral Lord Anson, for example, collected £125,000 for his voyage of circumnavigation in 1740, and a further £62,000 after the battle of Cape Finisterre. Admiral Sir Charles Saunders made £65,000 out of his capture of the treasure ship *Hermione* in 1762; the share of each of his seamen was £482.

But woe betide any seaman who helped himself before the regular distribution took place. He was haled before a court-martial and severely punished. John Hervey, a midshipman in charge of a prize crew from the *Diligence* in 1761, was foolish enough to take "two trunk cases of iron ware, a case of pictures, a case of Delph ware and a cask of wine." He was sentenced to be disrated as a midshipman, to receive 72 lashes with a cat-o'-nine-tails, have a halter round his neck, and to wash down the latrines of the ship for three months after his imprisonment.

So, from the early days of the 14th century until 1914 the actual captors of contraband had the right to share the proceeds of their captures. And the Prize Court, administered in the Court of Admiralty, still functions even to-day under the *Naval Prize Act* of 1864. Under this Act, every enemy ship and cargo, and every ship suspected of carrying goods destined for the enemy, must be delivered up to the Marshal of the Court to determine whether the ship and/or cargo are liable to condemnation as contraband.

Then, just before war broke out in 1914, the Admiralty decided that the basis of distribution was not all that it might be in modern war, where one squadron might be engaged in waters where no prize was likely to be captured, while another squadron would be engaged more profitably; the old system was abolished and a common Prize Fund was established.

The money from the sale of contraband or an enemy prize goes to the Exchequer if the vessel is captured in port, but to the Admiralty if it is captured on the high seas.

The jurisdiction of the Admiralty Court is not confined to the distribution of prize money; it deals with all mercantile shipping and mercantile matters, including the owners of ships and goods which

suffer wreck on English shores who seek to gain possession of their property. In cases where a question of nautical skill is involved in the matter of settling a dispute, the Admiralty Court also resorts to Arbitration. It deals with all disputes between part-owners of vessels and all questions relating to salvage. It also has powers to inquire into certain wrongs or injuries committed on the high seas, as in cases of collision. Thus, its jurisdiction as a court of first instance is as wide as is its jurisdiction as a Prize Court.

One of the most important officers of the Admiralty Court is the Admiralty Marshal. His is a very ancient office and his duties are manifold. He has a picturesque baton of office consisting of a silver oar. In olden days when piracy was rife, he used to carry this emblem over his shoulder as he led convicted pirates to execution.

He carried it when the notorious Captain Kidd made his way to Execution Dock in 1701 after his trial. This trial was of particular interest because it was heard at "The Admiralty Sessions at the Old Baily", showing that the Court of Admiralty in its criminal jurisdiction was used to sitting in this court over a century before the Act of 1834.

Kidd, with a number of others, was charged that they did "piratically seize and rob a certain ship called the *Quedah Merchant*, putting the Men on Board in Fear of their Lives, and taking the said Ship with her Apparel, Tackle and Goods, and converting them to their own use against the King's peace."

The irony of the whole thing was that Kidd had been engaged by a private company, which included the Duke of Shrewsbury, the Lord Chancellor Somers, the Earls of Romney and Oxford, and a number of others, to go out in an armed vessel and "seize and take pirates and bring them to justice".

In other words, the pirates who had been taking such toll of English shipping were to get a taste of their own medicine. Kidd was to go out and chase them, fight it out with them, capture them and relieve them of their booty and their ships, and as soon as possible bring them back so that they could be well and truly hanged. For his part in this expedition he was to get a fifth of all the profits, the rest going to the company.

He left London in 1695 in a well-armed ship, the *Adventure*. He rounded up several pirates, and then fell in with a very large ship the *Queddah Merchant*. She was an English vessel commanded by an English captain with Dutch officers and a Moor crew. She was no pirate, but an English-bound merchantman.

Kidd boarded her, divided her cargo among his crew, raised his

flag upon her, sunk his own *Adventure*, and forthwith set out on his piratical career.

Eventually he was arrested, and, with his accomplices brought to trial at the Old Bailey. Doctor Newton, Advocate of the Admiralty, in opening the evidence, described how Kidd had sailed for a small island at the entrance to the Red Sea, "a convenient station for observing what vessels went from thence to India; and here, instead of taking pirates, he became one himself; the greatest and worst of Pirates."

The jury had little difficulty in finding a verdict of Guilty with the result that Kidd finished up at Execution Dock, that little riverside rendezvous where so many of his kind were hanged by the neck at low tide.

One of the most extraordinary trials for piracy, and one which illustrates how far-flung was the jurisdiction of the Court of Admiralty a little over two centuries ago, was that in which two adventurous girls figured as freebooters.

Mary Read was only three when her mother dressed her in boy's clothes. She was 13 when her mother explained the deception, and Mary decided to carry on as a "boy". At 14 she had enlisted in the Navy of Queen Anne's time, only to desert on reaching a Flemish port of call.

That was in the year 1706. She enlisted in one of Marlborough's foot regiments, then joined a regiment of horse, fell in love with her riding teacher, confessed her sex to him, and became a bride.

There the story of Mary Read might have ended but for the death of her husband in action.

Once more she donned male breeches and set sail for Jamaica. On the journey, the ship was taken by pirates, and the captain of the pirate ship decided that the fresh looking "lad" would make a good member of his crew. Behold Mary, then, embarking on a piratical career, armed to the teeth and thoroughly enjoying her life of adventure. She fell in love with one John Rackham, known by the euphonious name of Calico Jack. For years they roved the main and plundered, with Rackham having no reason to believe that his companion was a woman.

In 1719 they had got so much booty that they had to bury it on a convenient island, in casks.

Rackham reformed, however, took advantage of the Proclamation of Pardon which had been renewed, and retired from piracy when he met a girl. But his retirement did not last long. Soon he was at sea

again, as a pirate, and sought out Mary Read, under whatever masculine name she was using.

They resumed their partnership, and had with them Anne Bonny, the girl for whom and with whom Rackham had retired. More piracy exploits followed until they were all captured off the Jamaican coast.

In November 1720 Calico Jack and his crew, not Mary, who had now revealed that she was a woman, were tried at St Jago de la Vega, before an Admiralty Court. They were sentenced to death and hanged in chains at Gallows Point, Port Royal. Mary died while waiting trial in prison. Anne was sentenced to death.

This brief story shows how widespread was the power of the Admiralty Court, which functioned wherever the British flag was flown.

Coming to more recent times, we get an example of how the Court of Admiralty dealt with a salvage case. In 1916 a German submarine attacked a Portuguese sailing ship and set her on fire. Her crew escaped in boats, and managed to reach St Mary's, in the Scilly Islands, where they told the senior naval officer what had happened.

He at once went out in an Admiralty tug; when the fire was under control, he towed the Portuguese ship to Stony Island where it was beached. The Admiralty brought a claim for salvage services against the owners of the ship and were awarded £7,500 of which £800 went to the commander of the Admiralty tug.

Although Prize Bounty was specifically created for the benefit of officers and men of the Royal Navy, there came a time when the Court of Admiralty had to decide a fine point of Equity. When the German cruiser *Konigsberg* was sunk in the Rufigi River, East Africa in the First World War, the officers and men of the monitors *Mersey* and *Severn*, who were responsible, were awarded £1,920. It so happened that two air pilots and an observer of the Royal Naval Air Service (before it became part of the Royal Air Force) had, during the engagement, flown over the vessel and dropped bombs upon her to such good effect that they had materially aided in her destruction.

Sir Samuel Evans, the President of the Admiralty Court at that time, pointed out that this was the first time that airmen had staked their claims for an award which was purely for naval services; in view of what they had accomplished, however, he felt justified in allowing them to share in the bounty.

During the Second World War vessels were requisitioned or sunk on a wholesale scale, and many were the moot points of law which

had to be decided by these Judges of the Admiralty Court. I remember one case where two Rumanian vessels, the *Steaua Romana* and the *Oltenia*, were condemned by the President who sat beneath the symbol of the anchor. But he refused to condemn the wireless installations fitted in the ships, which were the property of a Belgian company.

It was urged that those installations had been hired to the Rumanian owners and that when the vessels were requisitioned before Rumania entered the war, but after she had been declared an enemy country under the *Trading with the Enemy Act*, the British Government entered into a fresh hiring contract with the Belgian owners of the apparatus.

The Crown claimed that wireless apparatus was part of the ship's apparel, and quoted a case in which wireless apparatus had been condemned during the previous war. But his lordship quickly unravelled this tangled skein of law.

In his judgment, he said, he declined to hold that His Majesty, having been pleased through one officer to hire the apparatus, would be capable of ordering another officer to seize these ships without impliedly excluding the apparatus so hired. If he were driven to hold that they were deliberately included in the seizure, such seizure was inconsistent with the Crown's own contract. Referring to the case on which the Crown had relied, the President pointed out that the captors had no knowledge of the separate ownership of the apparatus in question, whereas in this present case, they not only had knowledge, but were parties to a contract.

Not all cases are of such moment, or are dealt with in the Prize Court jurisdiction of the Admiralty.

Quite recently one of the Eights belonging to the Westminster Bank Rowing Club came into collision with a rum-tum, a light sculling boat. The occupant of the rum-tum, Mr Jack Keen Edwards, of Putney, brought an action in the Admiralty Division, claiming damages for negligence against Mr Arthur Quickendon and Mr Charles Etherton Forester, officials of the Bank rowing club.

According to Mr Alban Gordon for Mr Edwards, the racing eight was coming downstream with the tide, and struck the single-sculler after only a last minute warning. The prow, consisting of a piece of wood 6 in. by 2 in. and sheathed in copper, caught Mr Edwards in the thigh.

"We say the cox of the eight was a boy of thirteen and only some 4 ft. 2 in. or 4 ft. 3 in. in height, and therefore could not see the sculler," said counsel.

For the defence it was urged that after the cox had given the order "hold her all", the rum-tum came on at high speed. Negligence on the part of Mr Edwards was alleged, in that he failed to keep clear of the eight—contrary to the usage that small, easily-managed boats should do so.

Mr Edwards, giving evidence said that he was rowing slowly as he was crossing against the tide. He heard a sharp cry and the next moment felt a blow in the back.

For the rowing club, Mr Stephen Murray asked several questions regarding the "rules of the river", eliciting from Mr Justice Henn Collins the remark, "These rules only say in more formal language 'Don't be a fool'."

"Have you ever seen a cox who could see over the heads of the oarsmen?" asked Mr Murray, and the witness confessed he had not.

"Doesn't that mean that in any eight there is a 'blind spot' both dead ahead and something to each side, and everyone who uses the river knows that difficulty?"—"Yes."

Then came the experts!

First, Mr George Sims, the famous boat-builder. Mr Sims, who was building both the Oxford and Cambridge eights that year, said that because the Oxford cox was very small, his seat in the boat was being raised 4½ inches.

Mr John Thomas (Bossy) Phelps, the King's Bargemaster, followed Mr Sims into the witness box.

"It is an unwritten rule that boats crossing the river should give way to those going downstream," he said.

This case is typical of the lesser issues which come before the Court of Admiralty, but, as in other courts, no matter how small the issue, the same patient consideration is brought to bear on all the evidence, and the same scrupulous care is taken to see that justice is done.

It was a much mightier problem that the Court of Admiralty had to probe, following that terrible day in October 1942, when the giant 84,000 ton liner, *Queen Mary*, collided with the British cruiser *Curacao* off the Irish coast, cutting her completely in half. Within five minutes the cruiser had sunk with the loss of 25 officers and 313 ratings.

It was one of the worst disasters in maritime history. *Queen Mary* was racing at top speed across the Atlantic for the Clyde with 15,000 American troops on board when the collision occurred nearly 25 miles north-west of the Bloody Foreland, Donegal.

The look-out man on the liner raised the alarm that a suspected U-Boat had been sighted. The great ship wheeled to carry out

avoiding action, just as the gallant little *Curacao* was racing towards the submarine. The two ships crashed into each other at full speed, the bows of the liner cutting clean through the ribs of the cruiser, and carrying one half along on each side of her until the force of the water washed the two halves away and they sank.

The *Queen Mary's* orders did not permit her to stop to pick up survivors, and I believe that only *Curacao's* captain, Captain J. W. Boutwood was saved.

Never was there a more sensational case ever heard in that unpretentious court, when at length actions on behalf of the Admiralty and of the next-of-kin were brought against the owners of the liner, the Cunard White Star line.

The case for the Admiralty Commissioners was that the *Curacoa*, an anti-aircraft cruiser, was acting as escort to the liner when the *Queen Mary* crossed under her stern in the course of a zig-zag manoeuvre and then turned to starboard. The wheel of the *Curacoa* was put to starboard in an effort to avoid colliding, but the liner came on and struck the port side of the anti-aircraft cruiser. The Commissioners alleged that the *Queen Mary* failed to keep clear of the *Curacoa* or to make any effort to do so in due time.

For the Cunard White Star Line it was urged that the collision was caused by the negligent navigation of the *Curacoa*, that the Naval vessel failed to keep clear of the liner, and improperly altered her course to port.

Mr Justice Pilcher found the *Curacoa* was alone to blame. The case was taken to the Court of Appeal where that judgment was varied by a finding that the *Curacoa* was two-thirds to blame and the *Queen Mary* one-third responsible.

From that decision both parties appealed to the House of Lords, each seeking to have the whole of the blame attached to the other party. Lords Porter, Merriman, du Parcq, Normand and MacDermott dismissed both appeals and upheld the decision of the Court of Appeal, ordering that each party should pay their own costs.

CHAPTER NINETEEN

THE COURTS OF APPEAL

THERE are two Courts of Appeal housed in the Royal Courts of Justice in the Strand; and, like the Law Courts themselves, they are of comparatively modern origin.

The Court of Appeal, which deals only with appeals in connection with civil cases, came into existence with the Judicature Act of 1873. The Court of Criminal Appeal which, as its name suggests, deals with appeals in criminal cases from petty theft to murder, was founded in 1907.

As we have seen, it was possible for a person to make some sort of appeal in both civil and criminal cases long before these courts were set up. I have already shown how, almost from time immemorial, a subject had the right to petition the King himself, if, in the words of King Edgar, "the law be too heavy let him seek mitigation of the King", and later on in the words of Canute, 1014–1035, "unless he may not be entitled to any justice within his hundred".

The Statute of Westminster II, 1285, also provided that if a litigant considered that there had been some "error" on the part of the Judges of the King's Bench (in criminal matters) or of Common Pleas (in civil matters) or in any of the local courts, he could embody such error in what was called a Bill of Exceptions, which, after due dealing by a Judge, was put on record as an error.

But there was no Appeal Court, nor was there any real appeal as we understand it to-day. The appellant could not, for example, ask the King to reverse a judgment given by his Hundred or Shire court. He could only declare that he was not able to get a judgment for some reason or other, or that the court had wrongly usurped jurisdiction over some matter or other, or that the judgment which had been given by a court had been flouted by the other party.

Once more, we have evidence of a struggle for power between the courts. The King's Bench, for instance, had established its right to hear appeals brought by writ of error from the Court of Common Pleas. It then tried to establish its jurisdiction on similar lines over the Court of Exchequer. But the worthy Barons of that court rose up in indignant protest. They went back into history, and by a well-

balanced series of arguments made it clear that the King's Bench had no reliable basis for their claim.

In 1358 an Act was passed establishing the first Court of Exchequer Chamber. It had been a very prolonged struggle beginning in 1329, soon after Edward III came to the throne, until the Lord Chancellor and the Lord Treasurer combined with other Judges and formed this tribunal. In the reign of Queen Elizabeth, 1558–1603, another court was formed from Judges of the Common Pleas and Exchequer to review judgments of the King's Bench.

Sir Henry Slesser in *The Law* briefly sketches the history of this evolution as follows:

> "Before the *Judicature Act*, 1873, appeal lay from the three Courts of Common Law to the Court of Exchequer Chamber, which consisted of Judges chosen from the two other than that which had decided the case. The Court originated in a Court of Error set up in the time of Edward III, to hear appeals from the Exchequer—a right hitherto claimed by the King's Bench."

In addition, there was also a Court of Appeal in Chancery, which was also amalgamated in the Court of Appeal under the Judicature Act. There was also a High Court of Delegates which heard appeals from the Ecclesiastical Courts and from the Court of Admiralty, until the Privy Council took over in 1833. And always standing behind all these courts, just as it stands to-day, was the House of Lords as the ultimate and supreme Court of Appeal. Although the judgments uttered by the Court of Appeal in the Strand are binding declarations of the law, they only remain so as long as they are not upset by the findings of the Law Lords in the Upper House.

The constitution of the Court of Appeal is normally comprised of the Master of the Rolls and five Lords Justices of Appeals. There are also certain *ex officio* members such as the Lord Chancellor, the Lord Chief Justice, the President of the Probate, Divorce and Admiralty Division, and any ex-Lord Chancellor who may be called to sit. Their lordships, usually sitting three in number, deal with every type of civil case, having been given the powers and jurisdiction of the Lord Chancellor and the Lords Justices in Equity, of the Exchequer Chamber in common law, and of the Privy Council in Admiralty and Lunacy appeals.

The Court of Criminal Appeal is another example of the completion of a process by which English justice has progressed, painfully slowly perhaps, through a series of reforms and improvements.

We see it in the Act of 1836 by which prisoners were allowed to employ counsel to defend them, and were thus placed on an equal basis with their prosecutors. Again, in 1848, when the Court of Crown Cases Reserved was instituted. This gave a convicted person the right to appeal to this court which was comprised of at least five Judges of the Queen's Bench (as it was then) on points of law. In such cases the prosecutor or the person convicted might appear to argue his case, or else have it put for him by counsel.

The court was quite powerful in its way, being competent to reverse, amend or confirm any judgment given in the court below. But so scant was the knowledge of one's rights in this respect, that according to Sir James Stephen, in his *History of the Criminal Laws of England*, fewer than twenty cases a year came before the Court.

Nor was the Court for Crown Cases Reserved an appeal court in the true sense of the word, for there was no provision for making an appeal from the verdict of a jury on a question of fact as there is to-day. Mr Jenks, in his *Short History of English Law*, depicts the feeling that gave rise to the Court of Criminal Appeal:

> "The most striking evidence of the public conscience in the administration of the criminal law was the establishment in the year 1907 of the Court of Criminal Appeal. . . . Under the statute establishing this tribunal, any prisoner may, with the leave of the tribunal itself, or the court which tried him, appeal on grounds of fact, or mixed law and fact, or any other ground, against his conviction; while, with the leave of the appellate tribunal, he may even appeal against the amount of his sentence unless this is fixed by law. . . ."

The writer goes on to point out that the Court of Criminal Appeal "is the new tribunal which has taken over the duties of the old Court of Crown Cases Reserved".

Another advance on behalf of the prisoner was the introduction of the Criminal Evidence Act of 1898, by which a prisoner became competent to give evidence on his own behalf. There are divergent views among members of the legal profession as to whether this is an advantage or not.

Prisoners whether guilty or innocent do not always make the best witnesses, and the most truthful witness may wilt and be utterly confounded at the hands of a skilful counsel. From my own experience in every sort of criminal court up and down the country, I can only say that I have seen many a man convict himself out of his own mouth

in the witness box; and I have seen an equal number who have established beyond all doubt the truth of their story to the jury. On the whole, I think it is to the benefit of the community.

It is certain that when the Court was set up in 1907, it satisfied a long-felt need. That Mr Justice Hawkins should have opposed its institution on the grounds that such a court was "impractical", did not deter Mr Asquith (afterwards Lord Oxford and Asquith), and Sir Henry James from introducing a Bill into the House of Commons. Their courage was rewarded, and we can now see what part this court has played in the legal life of the community during the forty-odd years of its existence.

The majority of appeals made there are dismissed. Rarely does a murder appeal succeed. But four years after the Court of Criminal Appeal was set up it allowed an appeal in a murder case. It was the first appeal of its kind to succeed—and the murderer was clearly guilty.

The man was a young labourer, Charles Ellsome who, in the September of 1911, stood in the dock of the Old Bailey charged with the murder of his mistress. That usually unerring Judge, Mr Justice Avory, was sitting in Court No 1 when Ellsome appeared in the dock, to hear Mr Archibald Bodkin, for the Crown, tell the story of youthful depravity which had brought him there.

For months Ellsome had lived on the immoral earnings of Rose Pender a 19-year-old prostitute. Eventually she left him, and Ellsome went about threatening vengeance upon her. He bought a chef's knife, and soon afterwards Rose was found lying stabbed to death in the street.

Never was there a more loathsome procession of witnesses to the witness box than on the occasion of that trial. One man named Fletcher, a known thief, swore that in the early hours of the morning of the murder the accused had called out to him that he had "killed Rosie stone dead". Other witnesses, prostitutes like the deceased, gave equally damning evidence, and the Judge summed-up. He warned the jury against accepting the uncorroborated evidence of a man like Fletcher, or of the other witnesses. He suggested, however, that his evidence had been corroborated by a statement made by Ellsome immediately after the murder. This was perfectly true. But that statement, although produced at the police court hearing, was not put in as evidence at the trial. It was a fatal error on the part of the learned Judge, and counsel for prisoner, Mr A. S. Carr, was not slow to take advantage of this slip after Ellsome had been sentenced to death.

Mr Carr took the case to the Court of Criminal Appeal. It was indisputable that the Judge had introduced a statement at the trial which was not in evidence, and the appeal was allowed. Mr Justice Darling, in quashing the conviction, regretted that the court had no power to order a new trial.

Although this, the first murder appeal to succeed, had taken place only four years since the Court was set up, it was 20 years before any other person convicted on a like charge walked out of that court a free man. That was William Herbert Wallace, the Liverpool insurance agent who was found Guilty of the murder of his wife.

This is not the place to discuss the ramifications of one of the most extraordinary murder cases on record, and one which has puzzled criminologists and inspired detective story writers.

But there was another case which occasioned much interest. As in the ordinary Court of Appeal, so in the Court of Criminal Appeal, three Judges usually compose the tribunal. I remember one occasion, however, when so important was the point of law at issue that 13 scarlet-robed Judges with Lord Hewart, the then Lord Chief Justice at their head, sat to hear the appeal.

The man, Charles Leslie Norman, had been convicted of burglary and of uttering forged cheques. He had also been convicted as an "habitual criminal" 15 years before, and, according to the Judge at his trial, the jury were bound to find him Guilty of this offence as he had already been convicted on such a charge.

Fortunately for the prisoner, the Poor Prisoners' Defence Act of 1903 was well in its stride, and he was able to secure the services of no less a barrister than Mr Roland Oliver, now Mr Justice Oliver, when his appeal was heard. For the Crown Mr Travers Humphreys (until his recent retirement Mr Justice Humphreys) appeared.

At first three Judges sat to hear the appeal. But so important was the question, affecting as it did the lives of so many criminals who had been convicted on similar charges, that the hearing was adjourned so that a "full court" might sit in order to ensure a definite ruling.

The man round whom all this majesty of law was gathered was of little consequence so far as the community was concerned, but in the eyes of the law he was entitled to the fullest consideration. Hence the assembling of those 13 red-robed Judges to study and deliberate upon all the legal arguments brought before them on either side.

In the end, his conviction as an habitual criminal was quashed together with the sentence of five years' preventive detention that went with it. The three years penal servitude which had been passed

on him for the burglary and uttering forged cheques, and to which he had pleaded guilty, naturally remained unaffected.

Even more remarkable was the strange story of George Fratson who had been sentenced to death for the murder of George Armstrong, a Manchester hosier, in 1929. He made 14 statements to the police confessing to the crime, but when put upon trial for his life, he pleaded Not Guilty and said his confessions were "bluff".

Fratson appealed against his death sentence but the appeal was dismissed. Everything was set for his execution, when, quite suddenly, Fratson was reprieved.

Further investigations had revealed certain evidence which had not been produced at his trial. This was a scrap of bloodstained cardboard bearing what appeared to be the imprint of a human hand. No evidence concerning this piece of cardboard had been given, and it only became known when Mr Harry Allan, for the appellant, asked to call additional evidence at the Court of Criminal Appeal.

Chief Inspector Harry Battley, head of the fingerprint department at Scotland Yard at that time, entered the witness box and stated that on this piece of cardboard he had found a bloodstained mark which might have been the imprint of a finger or thumb. But the important part of his evidence was this: "If the mark *were* made by a portion of the human hand," he said, "it was neither the hand of the deceased nor of the appellant."

It was in July 1929 that the Court of Criminal Appeal dismissed Fratson's bid for freedom, in spite of this evidence. Lord Hewart described the case as "peculiar" as so much depended on the admission of the accused man himself. With regard to the piece of cardboard, said the Lord Chief Justice, "the evidence was not such as to add materially to the evidence at the trial."

But the piece of bloodstained cardboard aroused a feeling of uncertainty in the public mind. Questions were asked in the House of Commons, and the Home Secretary was approached direct. As a result, not only was Fratson reprieved, but a re-hearing of his appeal was ordered.

So important was this new hearing considered to be that five instead of the usual three Judges sat to hear it. Patiently they considered the whole position once more in the light of the new evidence. Carefully they sifted every legal argument that was produced by Fratson's counsel. But at length they dismissed the appeal, so that the prisoner went back to complete the life sentence to which his death sentence had been commuted.

Legal history was again made in this court when William Burkitt,

a Hull fisherman who had been found Not Guilty of murder, but guilty of manslaughter, and sentenced to "be kept in prison for your natural life", appealed nine years after sentence.

In 1939, when Mr Justice Cassels passed sentence upon this man he told him:

"The jury have taken a merciful view of your crime. They did not know what you know and what I know, that this is the third time you have stood in the dock charged with murder. Each time it has been the murder of a woman with whom you have been living. Each time the jury have taken a merciful view. . . . I can see in your case not one redeeming feature."

So William Burkitt went off to spend the rest of his life in prison.

It was just as the Judge had stated. In 1915 this man had killed a Mrs Tyler and was sent to penal servitude for 12 years. Released from prison in 1924, he went to live with a Mrs Ellen Spencer who died at his hands in 1925. On this occasion he received 10 years penal servitude.

He was released from prison in 1935, and four years later killed Mrs Emma Brooks. It was for this crime that he received his last sentence in 1939. On each occasion he had been charged with murder, and on each occasion the jury had brought in a verdict of manslaughter. Burkitt might have considered himself to be a very lucky man. But he was not satisfied.

In 1948 there was passed the Criminal Justice Act which suspended the death penalty for five years, and which contained many other alterations in the prevailing criminal law. Burkitt evidently made a close study of the controversy that ensued in the Press and in Parliament. He decided that he would make a belated appeal on new and original grounds.

He came before the Court of Criminal Appeal in 1948 where, as usual, a courteous and patient hearing was given to all the points raised. But the Lord Chief Justice, Lord Goddard, and the other two Judges, were not impressed. Said Lord Goddard: "It was the only possible sentence. . . . There was nothing at all in Burkitt's contention that he had been sentenced to a term that was illegal." The appeal was dismissed.

The Criminal Justice Act of April 1948, under which Burkitt had sought to gain his freedom, was amended in the following June, only two months after it became law.

So loud was the public outcry that the clause suspending the death penalty for five years was deleted and Capital Punishment restored.

It is strange how old "lags" imagine they know more about the law than do the Judges who sentence them.

John Cox, a burglar, was another of these gentlemen.

In 1945 Cox was sentenced to eight years' penal servitude for burglary, theft and robbery. In 1950 he entered the Court of Criminal Appeal there to demand his release from prison under a *habeas corpus* motion that he was being wrongfully detained in Parkhurst Gaol.

At the very outset, he told their Lordships: "I don't appear before you as a man of good character. I am a man of bad character."

"Never mind that," was Lord Goddard's kindly response. "You say you are wrongfully detained in prison?"

So John Cox acted as his own barrister and "argued" his legal points before the three learned Judges. They listened intently to every word he uttered, and then called upon Mr Elwyn Jones who represented the Crown. What had he got to say about it. Why had Cox not been duly released after serving his six years in gaol, allowing two years' remission for good conduct?

It was not difficult to explain. When Cox was sentenced to the eight years in February 1945, he was on "licence". He had only been released in June 1944 from a previous four years' sentence, and there were 574 days of that term unexpired when he committed the last offence. The learned Judge knew all about this when passing sentence.

"That licence was forfeited by reason of his conviction," said Mr Jones. "Cox thus became liable to serve the unexpired portion of the previous term. The Penal Servitude Act made Cox liable to serve 574 days as well as the eight years."

Such is the law, and, of course, Cox well knew this, but I suppose he felt that it was worth trying.

"The sentence is lawful, appeal dismissed," was the verdict, and Cox returned to Parkhurst.

As I have already mentioned a prisoner can appeal against his conviction on various grounds, and he can also appeal against his sentence on the grounds that it is too heavy; when he does this he takes a grave risk. While the Court of Criminal Appeal has the power to reduce sentence if in their view it is a longer sentence than that warranted by the crime, they also have the power to increase sentence if they deem that it is too light for the seriousness of the offence.

One such appellant who came before Lord Goddard and two other learned Judges in March 1951, was Patrick Michael Johnson, alias "Captain Johnson of MI5". He was sentenced at the Old Bailey to

four years' ''preventive correction'' for a series of false pretences on women, while on a tour of Southern England posing as a member of the Foreign Office staff engaged in spy catching.

It was not the first time that Johnson had been sent to gaol, and his plea now, through Mr Christmas Humphreys who appeared on his behalf, was that ''Johnson was so nearly mad that he lived in a world of fantasy, and the only hope he had was to receive treatment in a specially-equipped mental hospital. There was no such hospital within the prison system.''

Counsel added: ''Johnson ardently desires to be cured.''

This drew from Lord Goddard the retort that Johnson seemed to desire to be cured only when he was in prison.

His Lordship then drily went on: ''No doubt there are many in prison who would like to be cured but who cannot afford to bring eminent medical men to testify to the need of treatment. There is no provision in our criminal law for sending a man to hospital and ensuring that he stays there. The fact is that this man is a danger to the public.''

The sentence was then increased to seven years' imprisonment.

* * *

The Courts of Appeal are not the final court of appeal. As we have seen, the House of Lords performs that function. So few cases, however, reach the Lords that for all practical purposes the Courts of Appeal have the final word. Thus they are an appropriate subject with which to bring this story of English justice to a close.

There have, of necessity, been many omissions, but this is a book for the layman and not the expert. In general terms, and without too much detail, I have tried to give a popular account of the development of English justice and the courts which have served it.

Each court deserves a volume to itself. Indeed, books have been written about individual trials and cases in the courts; but I have selected details and extracts, I have summarised certain trials and cases which emphasise the variety and contrast of English justice, or which have played some part in weaving the texture of our Law.

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INDEX

Administration of Justice Act 1938 112
Admiralty Court:
Admiral, title goes back to 1300 237
Appears in 14th century 237
Judges of, helped by Trinity Brethren 239
Jurisdiction of 238
Marshal of Court, an ancient office 242
Merged into probate and Divorce Division 239
Reports of, go back to 1390 236
World court, A 235
Aitken *v.* London & North Western Rly. 102
Ale Tasters task 42
Allan, Maud. Libel action 90–92
Andrews, Wilfred. Trial of 77
Anglo-Saxon courts 10
Anglo-Saxon times, laws in 9
Appeal Court:
Civil Appeals only 248
Founded in 1873 248
Appellate Jurisdiction Act 1876 137
Ashford *v.* Thornton. Ordeal by Battle 1818 12
Assize of Bread 42
Assize of Clarendon 1164 38, 43
Assize Courts:
Ancient buildings, held in 51
Divorce cases now heard at 80
Early Assizes 65
Eyre, The General 55
Grand Assize, The 53, 64
Held 4 times yearly 54
His Majesty's Judges of Assize 54
Kid gloves commemorate crimeless list 52
Legal clearing house for civil and criminal cases 51
Severity of judges 56
Type of cases heard at Assizes 65
Assize of Northampton, 1176 43
Atkin, Lord 77, 157
Audley, Lady. Gives evidence against husband 69
Audley, Mervyn Lord. Trial of Peer at Assizes 68
Austin, Doris. "Nuisance" action 78

Baby. 360 day case 160
Bacon, Sir Francis 182
Baker, Mrs. Enticement action 78
Ballantine, Serjeant 232
Baltimore, Lord. Trial of 31
Banker's Case, 1696 142
Bankruptcy Court. Its functions 209
Bankruptcy. Jurisdiction of County Courts 203
Banks, Peter. Inquest on 103
Barnes, R. H. 228
Barristers 57, 59
Baxter *v.* Baxter 159
Baxter, Hon. Mrs. Sued for slander 46
Beamish *v.* Beamish 147
Beard, Arthur. First murder appeal in House of Lords 153
Beckett, Thomas à 123
Bell, Thomas 174
Belt *v.* Lawes. Last trial in Westminster Hall 33
Best *v.* Fox & Co. Loss of *consortium* action 79
Bigham, Mr Justice 120
Bill of Exceptions 248
Bilton, Belle. Divorce case 225
Birkenhead, Lord 133, 154
Birkett, Lord Justice 105
Bishop, Court of 217, 230
Blackstone, Sir William 59, 100
Blake, Walter (see J. T. Hawtin) 165
Blanesborough, Lord 192
Booth, General 87
Booth, Bramwell 88
Bow Street Police Court 170
Bow Street Runners 169
Bradlaugh, Charles. Trial of 150
Branding 65
Breach of Promise actions 115
Bread, Assize of 42
Brerton, Jane. Married at age of 2 223
Bristol, Earl of 29
Bristol, First sheriff of 207
Bristol Tolzey Court 135
Broadmoor Criminal Lunatic Asylum 89
Brodart, Guy. Smuggling charge 167
Brook, W. L. 146
Brougham, Lord 189, 202
Brown, Hannah. Murdered by Greenacre 86
Buchel, Mrs Magda 118
Burchell, Tufnell Charles. Deputy Sheriff of London 45
Burkitt, Wm. Appealed against sentence after nine years 253
Burnham *v.* Smith 204

Byrne, Mr Justice 78
Byron, Lord. Trial of 27

Campden Wonder Trial 70
Caroline, Queen. Trial of 31
Carson, Sir Edward 117
Casement, Sir Roger. Trial of 121
Castlehaven, Earl of. Trial of Peer at Assizes 68
Chad, Mrs E. F. Action over a cat 205
Chancellor of the Exchequer 40
Chancellor, The Lord. His powers and duties 124
Chancery Court:
Ancient origin 123
Jurisdiction of 125
Equity, Law of administered 125
Records very scanty 126
Dormant Funds 130
Wards in 131
Child Marriage scandal 222
Chow, Muri Kumar. Appeal 197
Chung, Chie Cheung. Appeal 194
City of London:
Coroner's special powers 95
Courts. Guildhall & Mansion House 164, 209
Fire inquests. Under special Act 95
Solicitor. Sir A. F. I. Pickford 40
Clarendon, Assize of 38, 43, 64
Clarke, Sir Edward 235
Clay, S. H. 134
Clergy Discipline Act, 1892 199
Clerkenwell House of Correction 83
Cobham, Lord 67
Cochrane, Lord. Trial of 31
Coke, Sir Edward 67, 68, 96, 129, 178
Committee of Privileges 154
Common Law Practice Act, 1852 208
Compurgators or "Oath helpers" 64
Consortium, Action for loss of 79
Coroners Amendment Act 101, 106
Coroner's Court:
Ancient origin 94
Duties of Coroner 60, 100
Powers almost unlimited 101
Rolls of Coroner 95, 98
Woman made Coroner in 1951 107
County Court:
Bankruptcy can be dealt with 203
Early courts. Known as Shire Courts 10, 15, 35, 95
Judges, has its own 203
Jurisdiction of 203
Modern courts came into being 1846 203
Courts:
Admiralty 111, 216, 230
Anglo-Saxon 10
Appeal 248
Arches, Court of 135
Assize 20, 51
Bankruptcy 209
Bishop, Court of 217
Chancery 21, 111, 123, 231
Cinque Ports, Court of 237
Common Pleas 21, 110, 147, 248
Consistory 199, 221
Coroner's 94, 100
County 10, 15, 35, 95, 110, 202
Curia Comitatus 11, 65
Curia Regis (King's Court) 53, 108, 110
Criminal Appeal 153, 248
Crown Cases Reserved, Court of 250
Delegates, Court of 188, 249
Diocesan 218
Divorce 111, 216
Doctors Commons 212
Ecclesiastical 15, 36, 216
Exchequer, Court of 13, 21, 110, 248
Exchequer Chamber, Court of 249
Guildhall 164, 209
Humber, Court of 240
Hundred 10, 15, 35, 110, 135, 203, 206, 208
Hustings 39
King's (or Queen's) Bench 21, 89, 108, 248
Liverpool Court of Passage 203
Lords, House of 137
Manorial 15
Mansion House 164, 209
Pie Powder, Court of 206, 236
Police 162
Quarter Sessions 162
Probate 111, 216, 230
Provincial Courts 218
Record, Court of 206
Requests, Court of 185, 202
Royal Courts of Justice 14, 111, 150, 211, 213
Sheriff's 34, 96
Stannaries, Court of 206
Star Chamber 178
Tolzey Court 135, 206
Wardmoot 39
Westminster Hall. Home of earliest Law Courts 13
Cox, John. *Habeas corpus* motion 255
Crawford-Smith, Delphine. Impostor and swindler 165
Criminal Appeal, Court of:
Court of Crown Cases reserved, Court of Criminal Appeal took over duties 250
Criminal appeals only dealt with 248
Founded in 1907 248
Criminal Justice Act, 1948 169
Criminal Law Amendment Act 87
Crombwell, John of. Constable of the Tower 61
Cromwell, Oliver 21
Cromwell Barony revived 1923 155
Crooks *v.* Crooks 228
Croom-Johnson, Mr Justice 52

Cruisers Act, 1702 240
Curacao and *Queen Mary* in collision 246
Curling, Jesse 117
Custodes Pacis. Early Justice of the Peace 162
Custom—the root of English law 9

Darling, Mr Justice (Lord) 33
Davidson, Rev Harold. Rector of Stiffkey 200
Davison, William. Trial of 182
de Bascoville, Agnes 113
de Bereford, Simon. Trial of 141
de Bracton, Henry 95, 168
Debtor's Act, 1869 210
Deceased Wife's Sister Bill, 1907 146
Decies, John. Marriage at age of 8 223
de Clifford, Anne. Woman Sheriff 37
de Clifford, Lord. Trial of 141, 152
de Cromwell, Ralph 155
de Egremont *v.* Goldsmith 126
de Glanville, Ranulf. Justiciar of England 53, 57
de Hingham (or Hengham), Ralph 112
de la Haye, Nicolaa. Woman Sheriff 37
Delegates, Court of:
Ecclesiastical appeals dealt with 188, 249
Powers transferred to Judicial Committee of the Privy Council 189
Royal Commission held on, in 1832 189
de Montfort, Simon 139, 162
Deodand, Law of 96
de Segrave, Stephen. Justiciar, 1234 109
de Veil—established first London Police Office 170
de Veteripont Sisters. Women Sheriffs 37
Devil's Island Convicts' appeal 190
de Wastre, Robert 113
Digambaris *v.* Swetambaris. Action between idols 192
Diocesan Court 218
Divorce Court:
Arose out of modern needs 222
Succeeded Ecclesiastical Court 216
Domesday Book 11
Downing, Sir George. Marriage at 15 223
Doyle, Sir Arthur Conan 73–75
"Dozens", Duties of the 60
Dunhill, Mrs. Breach of Promise case 118
Dunlo, Lord. Divorce case 226

East India Company *v.* Thomas Sandys 26
Eastwood, Richard 166
Ecclesiastical Court:
Ecclesiastics as Judges 55
Forerunner of Consistory Court 11
Jurisdiction of 15, 36, 216
Edalji, George. Wrongfully gaoled for Great Wyrley Cattle Maiming outrages 71–75
Edwards *v.* Quickenden 245
Eligit, Writ of, Present day case 45
Ellesmere. Lord Chancellor 129
Ellsome, Charles. First murder appeal to Court of Criminal Appeal 251
Emmanuel, Arthur. Coroner 105
Englishry, Law of 99
Enticement actions 78, 156
Equity Cases 127, 249
Essex, Lady 25
Ethelbert's *dooms* and *bots* 9
Evidence Act, 1851 116
Exchequer Chamber, Court of 249
Exchequer Court 13, 21, 110, 248
Execution Dock 242
Explosive Substance Act, 1883 116
Eyre, the General. Ancient Assizes 16, 55, 57, 59, 61, 63, 96
Eyre, Justices of 60
Eyre, Rolls 59
Eyre, Sidney Spencer 173

Fawkes, Guy. Trial of 24
Fearnley-Whittingstall, Mr 106
Ferrers, Earl. Trial of, and execution 27
Festival of Britain. Scene of murder 88
Fines go to sheriff 43
Finnemore, Mr Justice 160
Fitzpatrick, Katherine. Breach of Promise case 116
Flowers, John, K.C. 166
Forfeiture Act, 1870 100
Fox & Co. *v.* Best. Action for loss of *consortium* 79
Franchise Court (or Manorial Court) 15
Fratson, George. Murder appeal 253
Fuchs, Dr Klaus. Trial of for high treason 92

Goddard, Lord Chief Justice 93
Goldsmith *v.* Kymberley 126
Gooding, Mrs R. E. Trial of for poison pen letters 75
Graves *v.* Entwistle 221
Great Wyrley Cattle Maiming Outrages 71–75
Green, Sir Stephen 106
Greenacre——, Trial of 86
Guildhall. City of London Police Court and County Court 164, 209

Habeas Corpus Act, 1679 83
Hale, Sir Matthew 59

Hamilton, Duke of 28
Hampshire's ancient Assize Court 51
Harker, William. Victim of "blood and fray" 41
Harrison, Thomas. Clergyman charged with slandering a judge 113
Harrison, William (see Perry Family) 70
Hastings, Warren. Trial of 31
Hawkins, Mr Justice 32
Hawtin, J. T. Swindler 165
Herbert, Sir A. P. Divorce Bill, 1937 229
Herniman, Capt. R. House of Lords appeal 159
Hewitt, J. A. Plea for permission to marry 174
Hill, Mr Justice 155
Hollowell, Miss Mary. Woman Coroner (1951) 107
Hottot *v.* Hottot. Divorce case 80
Houbigant, Miss. Cited in enticement case 78
Hubert, Archbishop 162
Hughes, Miss. Ward of chancery 131
Huntingdon, Earl of. First person to be beheaded in England 12
Hustler, Mrs. Charged with "encroaching on common" 42

Idols bring action 190
Indictable Offences Act, 1848 175
Inns of Court. Originally colleges of law 58, 211

Jackson, C. Fined for "blood and fray" 41
Jarrett, Mrs 87
Jeffreys, Judge, of Bloody Assize fame 26
Jenkins, Mrs Jessie. Baby claim 200
Johnson, P. M. Swindler 255
Jones, Elwyn 80
Jones, J. A. *Evening News* Court Reporter 172
Jowitt, Viscount. Lord Chancellor 156
Judges:
Drawn from ecclesiastics 55
Itinerant, in Henry I's time 17
Justices in Eyre 55
Justiciar most powerful judge in history 109
Thirteen judges sit to hear appeal 252
Judicial Committee of the Privy Council:
Deals with all Empire and Commonwealth appeals 187
First sat November, 1833 189
Highest Court in British Empire 187
Last appeal from India heard 200
Obscure laws administered 189
Strangest case ever heard in this court 197
Succeeded Court of Delegates, 1833 189
Jury:
Growth of jury system 18, 63, 64
Tribute to Penn jury at Old Bailey 85
"Twelve sworn knights". Chosen from 53
Justices of the Peace:
Derived from *Custodes Pacis* 162
Instituted by William I in 1076 according to Stow 162
Justinian. Roman Emperor, 527–565. Famous for codification of Roman Law 18

Keenan, James. Inquest on 103
Kenealy, Dr. Defended Tichborne Claimant 32
Kekewich, Mr Justice 133
Key, Jane. Ordered a whipping 41
Kidd, Captain. Tried for Piracy 242
King, The. His jurisdiction in olden times 15
Kings and Queens:
Alfred the Great, 871–901 11, 39, 45, 63, 123
Anne, 1702–1714 240
Arthur (maybe legendary) 51
Athelstan, 924–940 34
Canute, 1014–1035 17, 45
Charles I, 1625–1649 21, 113
Charles II, 1660–1685 142
David I, 1124–1153 62
David II, 1329–1371 62
Eadric, 673–680 34, 64
Edgar, 957–975 17
Edward the Confessor, 1041–1066 15
Edward I, 1272–1307 59, 94, 97, 112, 139
Edward II, 1307–1327 61, 62
Edward III, 1327–1377 44, 63, 163, 178, 237, 249
Edward IV, 1461–1483 13, 219
Edward VI, 1547–1553 115
Edward VII, 1901–1910 82
Elizabeth, 1558–1603 13, 40, 249
Ethelbert, 560–615 9
Ethelred, I, 866–871 64
Ethelred II, 973–1016 51
George II, 1727–1760 79
George III, 1760–1820 12
George IV, 1820–1830 31
Henry I, 1100–1135 17, 52, 94, 110, 163
Henry II, 1154–1189 18, 53, 56, 94, 110, 124
Henry III, 1216–1272 12, 20, 51, 112
Henry IV, 1399–1413 126, 151
Henry V, 1413–1422 15, 127
Henry VI, 1422–1471 127, 128

Henry VII, 1485–1509 179, 186
Henry VIII, 1509–1547 13, 24, 40, 57, 131, 186, 210, 223
Hlothar, 673–680 64
Ine, King of Saxons, 688–726 12, 45
Isabella, 1308–1330 61
James I, 1603–1625 24, 67
James II, 1685–1701 142
John, 1199–1216 10, 54, 65, 110
Mary Queen of Scots, 1542–1587 183
Maud, Empress, 1141–1153 51
Richard I, 1189–1199 55
Richard II, 1377–1399 21, 126, 139, 185, 237
Stephen, 1135–1154 51, 109
William I, 1066–1087
William II, 1087–1100 11, 16, 19, 211
William III, 1689–1702 151
William IV, 1830–1837 140, 210
King's Bench Division 89, 110
King's Council 179
Kingston Duchess of. Trial for bigamy 28–31
Knowles, Dr Benjamin. Trial of 193
Kremizi, Liana. Breach of Promise case 118
Kylsant, Lord. Trial of 141
Kymberley *v.* Goldsmith 126

Lancaster Chancery Court 135
Land Clauses Act, 1845 46
Laud, Archbishop 182, 184
Law:
Ancient Law Reports 57
Anglo-Saxon times. In 9
Canon Law 18
Common Law 17
Courts transferred to Temple Bar 150
English Law based on statutes and precedents 13
First text book of English Law 57
Long delays in law 132
Lords, House of. Part played by in 137, 249
Roman Law 18
Statute Law 140
Law Courts (see Royal Courts of Justice)
Law Journal. Comments on powers of Coroner 105
Law Merchant. Foundation of commercial law 207
Law Reform Bill 156
Legitimacy cases heard in Probate Court 232
Leicester, Abbot of 110
Lennox *v.* Walker 135
Libel Cases heard in King's Bench Court 89
Lincoln, Trebitsch. Trial of 171
Lion Brewery. Scene of murder 88
Liverpool Court of Passage 203
Local Government Act, 1888 208
London, Lord Mayor of 151, 209
Longchamp, William 109
Lord High Steward 151
Lords, House of 137, 139, 153, 159
Loudoun, Countess of. A ward in Chancery 133
Lord Lovat. Last person beheaded in England 12
Love Charter. Divorce case 80
Luther, Martin 224
Lynch, Col Arthur. Tried for high treason 120

McNaughton Rules. Legal insanity law 145
McPherson, Mrs L. Appeal 195
Magistrates, Bench of 162
Magistrates, Stipendiary 170
Magna Carta 10, 54, 96, 110, 138
Manchester, Duke of. Trial of 141
Manorial Courts 15
Markham, Daisy. Breach of promise case 117
Marriage Act, 1949 147
Master of the Rolls. Origin of office, etc. 127, 249
Matrimonial Causes Acts, 1857 and 1937 159, 216, 224
Maung, Aung Myatt. Appeal 195
Melville, Lord. Trial of 141
Merchant Shipping Act, 1854 239
Merritt, George. Murdered by Dr Minor 88
Metropolitan Police Act, 1839 164, 169
Middlesex Justices Act, 1792 171
Minor, Dr William. Murdered George Merritt 88
Miscarriages of Justice:
Edalji George 71–75
Gooding, Mrs R. E. 75
Perry Family. Three hanged for murder, though innocent 70
Mi Shew Ma. Appeal 195
Misprison of felony case 167
Mitchell, Mr Justice 131
Mohun, Lord. Trial of 143
Montez, Lola 220
More, Sir Thomas. Trial of 21
Mornington *v.* Mornington. 29-year law suit 132
Morris, Mr Justice 80
Morrison, Mrs A. Baby claim 200
Mullins, Mr Claude. Magistrate 171
Mummy. Inquest on 102
Municipal Corporation Act, 1835 239
Murder. Private prosecution for 175
Murray, Sir James. Compiler of Oxford Dictionary 89

Newgate Prison 82
Norman, C. L. Appeal 252

Northampton, Marquis of. Sued for breach of promise 117

Oath Helpers (or Compurgators) 64
O'Connor, Sir T. J. 158
Old Bailey, The 82
Ordeals as means of trial:
Battle Ordeal by 12, 53, 64
Ine, Ordeals in reign of 12
Prohibited by Henry III, 1219 12
Wager, Ordeal by 12
Orton, Arthur. Claimant to Tichborne Estates 22, 32

Pace, Mrs Beatrice 104
Packer *v.* Rand 205
Page, W. W. Keightley, K.C. 198
Pall Mall Gazette 87
Peel, Sir Robert 169
Peerage. Plea of Privilege 141
Peers. Trial of by Peers 141
Pemberton-Billing, Noel. Libel action 90–92
Penn, William. Trial of 84
Periton *v.* Abbot Faritius, 1109 110
Perry Family. Three hanged for murder though innocent 70
Persse, Henry (Atte) 118
Peterborough, Monk of 20
Petition of Right, 1628 67
Pezzani, Gino. Smuggling charge 167
Piracy, Punishment for 240
Police Court:
de Veil—Founded first London police office 170
Fielding Brothers at Bow Street 170
Forces. 120 in England 168
Hue and Cry in olden days 168
Peel, Sir Robert. Originates new system 169
Watch and Ward 169
Poor Prisoners Defence Act, 1903 66, 157, 252
Powell, Mr Frank. Magistrate 172
"Praying a tales", an ancient jury custom 81
Prester-Jones *v.* Prester-Jones. 360-day Baby case 160
Prisoners' Aid Society 175
Pritchard, Mr Justice 119
Private Prosecution 175
Privy Council 183
Prize Money 241, 244
Probate Court. Took over administration of Ecclesiastical Court regarding wills, etc., 1857 230
Procedure Appeal Act, 1879 99
Provincial Courts 218
Prynne, William. Trial of 184
Public Record Office 62
Punishments. Primitive in early days 12
Purchase, W. Bentley. Coroner 103
Pusar, Hugh. Bishop of Durham 109

Quarter Sessions:
Ancient court originating, 1388 163
City of London, held at Old Bailey 164
County of London, held at Newington Butts 163
Middlesex County Sessions, held at Westminster 164
Procedure similar to that of Assizes 163
Recorders or Justices of the Peace preside at hearings 162
Types of cases heard at—including appeals 164, 167
Queen Mary liner in collision with *Curacao*. Admiralty case 246
Quickenden *v.* Edwards 245

Rackham, John (Calico Jack). Pirate 243
Ralegh, Sir Walter. Trial of 67
Ramendra, Kumar. Appeal 197
Read, Mary. Woman pirate 243
Reeves. Magistrates of olden days 34
Requests, Court of:
Ceased to function, 1642 186
Mentioned first in 1529 186
Masters of 186
Rhondda, Viscountess 154
Road Traffic Act, 1934 77
Robinson, Alice. Trial of 83
Roman Law 18, 59
Rout, Tom. Finder of Treasure Trove 106
Royal Courts of Justice:
First situated in Westminster Hall 13, 19, 20
Transferred to Temple Bar, 1882 14, 111, 150, 211, 213
Royal Marriage Act, 1782 233
Ruddle, Lt-Col., G.K.F. 52
Russell Baby Case 155
Russell, Lord. Trial of 150

Sacheverell, Dr Henry. Trial of 25
Sackville, Barony of. Legitimacy case 233
St Paul's Cathedral 58, 112
Salford Hundred Court 135
Salisbury, Countess of. Woman Sheriff 37
Sandys *v.* East India Company 26
Scales, Mrs Mary. Appeal 190
Seal, The Great, of the Lord Chancellor 123
Sefton, Earl of 118
"Sentence of Matrimony" 115
Serjeants at Law. Origin of 57–59
Serres, Olive. Legitimacy case 233
Sex Disqualification Removal Act, 1919 154
Shawcross, Sir Hartley 93

Sheppard, Jack. Tried in King's Bench Court 63, 114
Sherfield, Trial of 183
Sheriffs Court:
Ancient office. Oldest in the land 34
Duties many and onerous 36, 38, 44
Punished for laxity 56
Sheriff's Rolls 40
Shorn of Power 54
"Turn" or "Tourn" of Sheriff 35
Women Sheriffs 37
"Ship-Money". To provide Navy for King 113
Shire-reeve from which Sheriff is derived 34
Shore, Jane. Trial of 219
Simner, Sir Percy. The King's Remembrancer 39
Skinner *v.* East India Company 142
Smith *v.* Burnham 204
Smith, H. C. 158
Solicitors. Duties and standing of 177
Somerset, Earl and Countess. Trial of 24
Star Chamber:
Abolished in 1641 185
Built in reign of Edward III 178
Could not inflict death penalty 179
Grandees of the Realm, its judges 181
Has no modern equivalent 178
Its contribution to our legal system 180
Name derived from "starred" ceiling? 178
Pro Camera Stellata 179
Star Chamber Act, 1487 179
Stead, W. T. Trial of 86
Stiffkey, Rector of (Rev H. Davidson) 199
Stillwell, T. P. J. 175
Stipendiary Magistrates 170
Stobart Babies. Wards in Chancery 133
Stretch *v.* Sim. Maid enticement case 156
Stuart, Lady Arabella 67
Sullivan, Serjeant, A. M. 59
Summary Jurisdiction Acts, 1848, 1879, 1899 169, 170
Summerfield, John. Married at age of 3 223
Svendsen—Trial for abducting heiress 26
Swan, Edith. Trial of, for poison pen letters 76

Tewkesbury, Abbot of 219
Thayer——brings "oath-helpers" to court in 1824 115
Thelluson's Act, 1800 130
Thelwall *v.* Yelverton 147
Thorpe, Wm. Trial of a priest 219
Thwaites, Mrs. Probate case 232
Tichborne Claimant (Arthur Orton) 22, 32
Toomes, Wm. Inquest on 102
Treasure Trove. Law on 95, 106
Tresilian, Sir Robert. Trial of 23
Trie, Thomas. Trial of 62
Turbeville, Sir Thomas. Trial of 22
Turner, Mrs. Trial of 25
Tyrwhitt, Robert. Feud with Sir W. Ross 65

Udall, John. Trial of 66
Uses, Statute of 1535 131

Vagabonds, Statute of 65
Vaisey, Mr Justice 134
Valentia, Lord. Trial of 31
Vincent——(see J. T. Hawtin) 165

Wakeford, Archdeacon. Trial of 199
Walker *v.* Lennox 135
Wallace, Sir William. Trial of 23
Wallace, Wm Herbert. Appeal on murder charge 252
Warwick, Guy, Earl of 51
Watch and Ward policing system 169
Wayneflete, Lord Chancellor 128
Watson, J. L. Coroner 103
Wells, Mrs Lucy Green. Appointed Sheriff at Canterbury in 1923 38
Wheeler, Mrs M. Sues for slander 46
West, M. R. J. 175
Westminster Hall:
Built by William II (Rufus) 16
England's oldest law court 13, 20
First home of Royal Courts of Justice 19, 108, 111, 127
Historic Coronation scenes, and trials 20–33
Mass trial of 480 people on riot charges 24
Last trial in 1882 33
Westminster. Statute of, 1275 139
Wickham, W. H. 175
Wife as chattel in 1950 134
Williams, Bishop of Lincoln fined 182
Williams, Raymond 106
Withers, J. E. Action over a cat 205
Wolsey, Cardinal. Lord Chancellor 24, 182
Women Sheriffs 37, 38
Woodhouse, Joan. Relatives brought private prosecution on murder charge 175
Woolmington, R. Appeal to House of Lords 157
Wright, Whittaker. Trial of 119

Yelverton *v.* Thelwall 147
York, Archbishop of. Trial of 142

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